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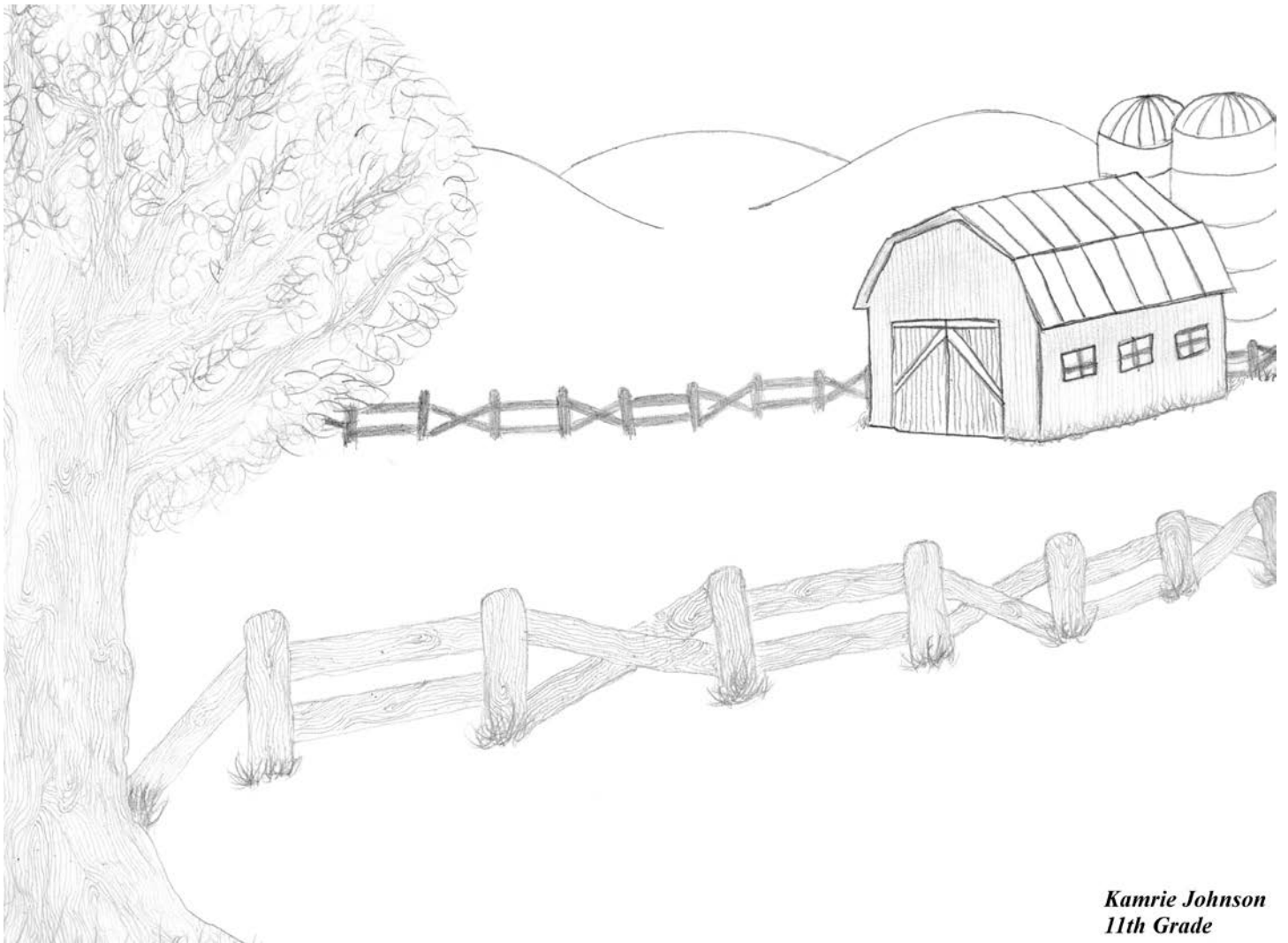
# TEXAS REGISTER

*Volume 39 Number 10*

*March 7, 2014*

*Pages 1547 - 1800*

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*Kamrie Johnson  
11th Grade*

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

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# THE ATTORNEY GENERAL

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

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

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

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

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Requests for Opinions

**RQ-1187-GA**

**Requestor:**

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Constitutional questions related to funding of County Energy  
Transportation Reinvestment Zones (CETRZ) (RQ-1187-GA)

**Briefs requested by March 12, 2014**

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

TRD-201400877

Katherine Cary

General Counsel

Office of the Attorney General

Filed: February 25, 2014



Requests for Opinions

**RQ-1188-GA**

**Requestor:**

The Honorable E. Bruce Curry

District Attorney

216th Judicial District

Bandera, Gillespie, Kendall, Kerr Counties

200 Earl Garrett Street, Suite 202

Kerrville, Texas 78028

Re: Whether a conviction that resulted in early termination of deferred  
adjudication is a reportable conviction or adjudication for purposes of  
chapter 62 of the Code of Criminal Procedure (RQ-1188-GA)

**Briefs requested by March 18, 2014**

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

TRD-201400880

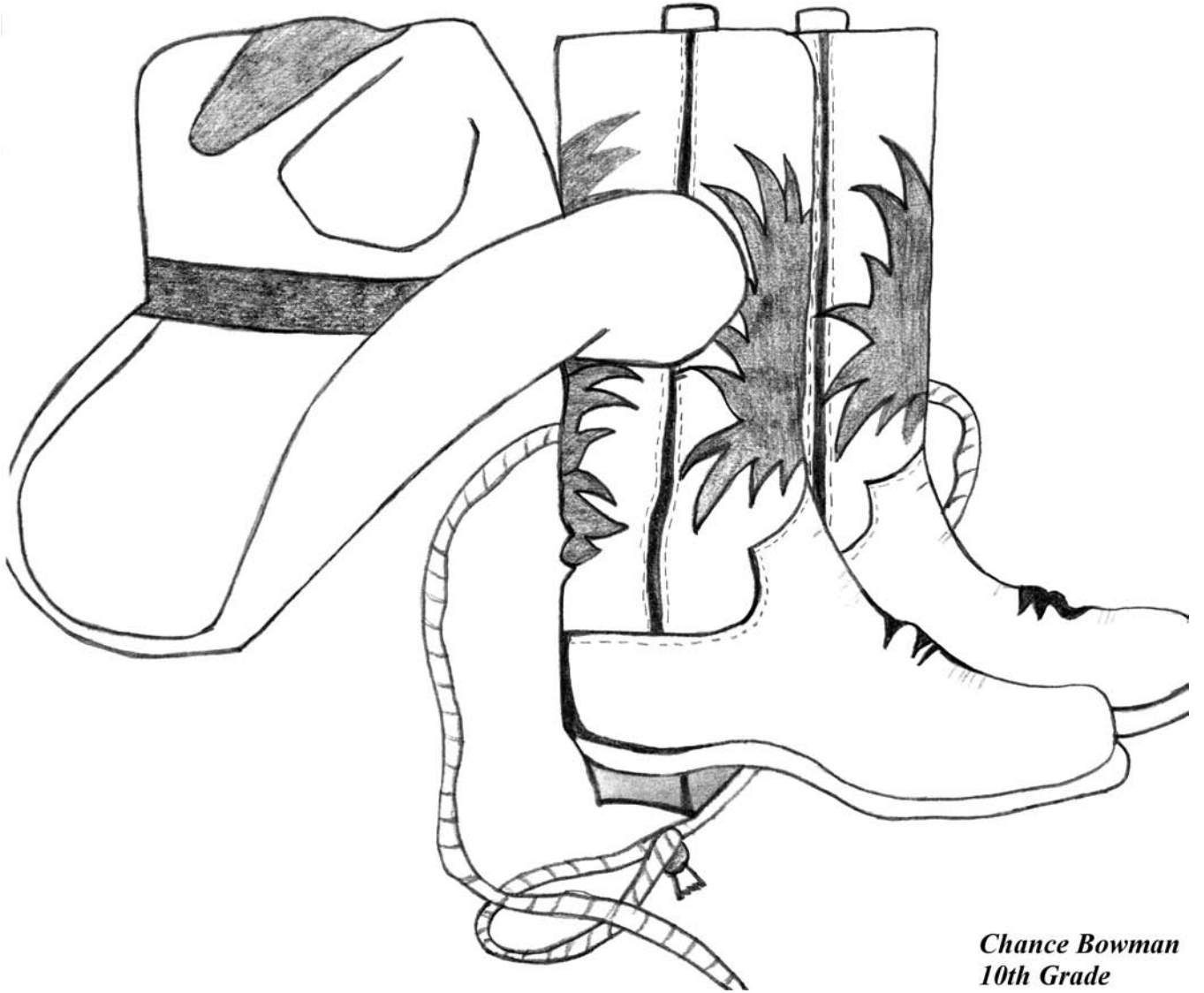
Katherine Cary

General Counsel

Office of the Attorney General

Filed: February 26, 2014





*Chance Bowman  
10th Grade*



# EMERGENCY RULES

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

#### CHAPTER 745. LICENSING

##### SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

##### DIVISION 3. CONFIDENTIALITY

##### 40 TAC §745.8495

The Texas Health and Human Services Commission, on behalf of the Department of Family and Protective Services, is renewing the effectiveness of the emergency adoption of new §745.8495,

for a 3-day period. The text of the new section was originally published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8035).

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400851

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Original effective date: October 30, 2013

Expiration date: March 1, 2014

For further information, please call: (512) 438-3437



*Madison McNeill*  
*10th Grade*



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

##### SUBCHAPTER B. GENERAL REPORTING RULES

###### 1 TAC §20.64

The Texas Ethics Commission (the commission) proposes new §20.64, relating to reporting of the forgiveness of a loan.

Section 20.64 clarifies that the forgiveness of a loan and the settlement of a debt are required to be reported as in-kind political contributions unless certain criteria are met. The forgiveness of a loan is NOT reportable if the loan is made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made, and the forgiveness of the loan was made in the due course of business. Similarly, the settlement of a debt is NOT reportable if the settlement reflects the usual and normal business practice of the industry and is typical of the terms the commercial vendor offers to political and non-political persons alike.

Natalia Luna Ashley, Interim Executive Director, has determined that for 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 section.

Ms. Ashley has also determined that for each year of the first five years the proposed rule is in effect the public benefit will be clarity in the law. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

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

New §20.64 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

Proposed new §20.64 affects the Election Code, Title 15, §251.001(2).

*§20.64. Reporting the Forgiveness of a Loan or Settlement of a Debt.*

(a) The forgiveness of a loan to a candidate, officeholder, or political committee is a reportable in-kind political contribution unless the loan does not constitute a contribution under §251.001(2) of the Election Code, and the forgiveness of the loan was made in the due course of business.

(b) The settlement of a debt owed by a candidate, officeholder, or political committee is a reportable in-kind political contribution unless the creditor is a commercial vendor that has treated the settlement in a commercially reasonable manner that reflects the usual and normal practice of the industry, and is typical of the terms the commercial vendor offers to political and non-political persons alike.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 21, 2014.

TRD-201400794

Natalia Luna Ashley

Interim Director/Special Counsel

Texas Ethics Commission

Earliest possible date of adoption: April 6, 2014

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



###### 1 TAC §20.68

The Texas Ethics Commission (the commission) proposes new §20.68, relating to presumption of campaign contribution. At its February 13, 2014, meeting, the commission, in response to a petition for rulemaking, voted to initiate a rulemaking proceeding and post for public comment the proposed rule submitted with the petition.

Section 20.68, the proposed rule submitted with the petition for rulemaking, provides that a contribution is presumed to be a campaign contribution under Title 15 of the Election Code if all or part of the contribution is used by the recipient to make a campaign expenditure or a political contribution. Under the proposal, the presumption would not occur when a transfer of a thing of value is made in a bona fide exchange for consideration in the ordinary course of business.

Natalia Luna Ashley, Interim Executive Director, has determined that for 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 section.

Ms. Ashley has also determined that for each year of the first five years the proposed rule is in effect the public benefit will be clarity in the law. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed rule.

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

New §20.68 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

Proposed new §20.68 affects the Election Code, Title 15, §§254.031(a)(1), 254.151.(6), and 254.261.

§20.68. Presumption of Campaign Contribution.

(a) A contribution is presumed to be a campaign contribution if all or part of the contribution is used by the recipient to make a campaign expenditure or a political contribution.

(b) Subsection (a) does not apply to a transfer to a recipient of anything of value if the transfer is made in a bona fide exchange for consideration in the ordinary course of business, including:

- (1) wages, salary or benefits associated with employment;
- (2) payment for services rendered, or to be rendered;
- (3) the sale, lease or rent of goods or other property; or
- (4) a commercial transaction.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 21, 2014.

TRD-201400793

Natalia Luna Ashley

Interim Director/Special Counsel

Texas Ethics Commission

Earliest possible date of adoption: April 6, 2014

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



## PART 5. TEXAS FACILITIES COMMISSION

## CHAPTER 121. COMPREHENSIVE PLANNING AND DEVELOPMENT PROCESS

### 1 TAC §§121.1 - 121.5

#### Introduction and Background.

The Texas Facilities Commission ("Commission") proposes new Chapter 121, §§121.1 - 121.5. Senate Bill 211, passed by the 83rd Legislature and effective June 14, 2013, added a new section to Chapter 2166 of the Texas Government Code, §2166.107.

The new section, §2166.107, directs the Commission to adopt a comprehensive process for planning and developing state property in the commission's inventory and for assisting state agencies in space development planning for state property under §2165.105 and §2165.1061 of the Texas Government Code. The Commission has determined that the comprehensive and planning procedures conforms to the direction of the Legislature and should be formally adopted by rule.

#### Section by Section Summary.

The Commission proposes new Chapter 121, relating to comprehensive planning and development procedures. The new chapter provides clarification concerning the comprehensive process for planning and developing state property in the commission's inventory and for assisting state agencies in space development planning for state property under §2165.105 and §2165.1061 of the Texas Government Code. Proposed new §121.1 defines terms used in new Chapter 121. Proposed new §121.2 sets out the Commission's policy concerning planning, use, or development of state property under the Commission's jurisdiction. Proposed new §121.3 adopts by reference the statutory planning and development process for projects in the capitol complex. Proposed new §121.4 sets out the planning and development process for projects not in the capitol complex. Proposed new §121.5 addresses public access to information.

#### Fiscal Note.

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

#### Public Benefit/Cost Note.

Mr. Keel has also determined that for each year of the first five-year period the proposed new rules are in effect the public benefit will be further clarification of the comprehensive planning and development procedures.

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 new rules. 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 new rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, Texas Government Code §2001.022 (Vernon 2008).

#### Request for Comments.

Interested persons may submit written comments on the proposed new 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 "Chapter 121 Comprehensive Planning and Development" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed new rules. Questions concerning the proposed new rules may be directed to Kay Molina, General Counsel, at (512) 463-7220.

#### Statutory Authority.

The new rules are proposed pursuant to Texas Government Code §2166.107 (Vernon Supp. 2013) which directs the Commission to adopt a comprehensive process for planning and developing state property in the commission's inventory and for assisting state agencies in space development planning for state property under §2165.105 and §2165.1061 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 new rules are those set forth in Texas Government Code §2166.107 (Vernon Supp. 2013).

#### §121.1. Definitions.

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

(1) Capitol Complex--Has the meaning prescribed in §411.061(a)(10), Texas Government Code.

(2) Commission--The Texas Facilities Commission as defined in §2165.0011, Texas Government Code.

(3) Division--The Commission's internal division that is primarily responsible for comprehensive planning, use or development of State Property.

(4) State Property--All public buildings, grounds, and property on the Commission's inventory within the charge and control of the Commission.

(5) Project--A building construction project of the state that is financed wholly or partly by a specific appropriation, a bond issue, or federal money. The term includes the construction of a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishings.

(6) Proposal--A building construction project of the state that is financed wholly or partly by a public-private partnership. The term includes the construction of a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishings.

#### §121.2. Commission Involvement Policy.

(a) The Commission shall be regularly informed as to the planning, use or development of State Property.

(b) The Commission shall include "Division report about planning, use or development of State Property" as a line item on the agenda for each regularly scheduled Commission meeting. The Division shall present the Project or any other proposal; identify its location; summarize its nature, timing and scope; and include such other and additional information as required by law.

#### §121.3. Planning and Development for the Capitol Complex.

(a) The Commission adopts by reference §§2166.105, 2166.106, 2166.1065, 2166.107, and 2166.108, Texas Government Code, as the comprehensive planning and development process for Projects upon State Property in the Capitol Complex.

(b) The Commission adopts by reference §§2267.006, 2267.0061 - 2267.0067, 2267.051, 2267.052, 2267.053, 2267.055, 2267.058, 2267.059, 2267.065, and 2267.066, Texas Government Code, as the comprehensive planning and development process for Proposals upon State Property in the Capitol Complex in addition to the requirements set out in subsection (a) of this section.

(c) It is the policy of the Commission that before the Commission makes a decision on the planning, use or development of State Property within the Capitol Complex, the public and interested parties have the opportunity to review and comment on the Commission's proposed plans for such planning, use or development of State Property. Any proposed plans for such planning, use or development of State Property shall be listed as a line item on the agenda for each regularly scheduled Commission meeting. In addition to the required notices to state agencies under the provisions named in this section, at least thirty (30) days prior to each regularly scheduled Commission meeting, the Commission shall serve notice of each Project or Proposal for the planning, use or development of State Property within the Capitol Complex upon the public and interested parties, including a designated representative of the city, county, and any other affected jurisdiction where the State Property is located. Notice shall be given by posting on the Commission website and in the *Texas Register*. The posting shall generally describe the Project or Proposal; identify its location, summarize its nature, timing and scope, and include such other and additional information as required by law.

#### §121.4. Planning and Development for Other State Properties.

(a) It is the policy of the Commission that before the Commission makes a decision on the planning, use or development of State Property situated outside the Capitol Complex that the public and interested parties have the opportunity to review and comment on the Commission's proposed plans for such planning, use or development of State Property. Any proposed plans for such planning, use or development of State Property shall be listed as a line item on the agenda for each regularly scheduled Commission meeting.

(b) As to planning, development or use of State Property in a municipality or the extraterritorial jurisdiction of a municipality or an unincorporated area, the Commission and the Division shall include public comment as an integral part of the planning process at points in time to assure that such public comment is meaningful for the Commission's planning and development responsibilities. As a matter of its promulgated policies, the Commission may further direct the Division to detail the manner in which the Division shall achieve meaningful public comment.

(c) At least thirty (30) days prior to each regularly scheduled Commission meeting, the Commission shall serve notice of each Project or Proposal for the planning, use or development of State Property upon the public and interested parties, including a designated representative of the city, county, and any other affected jurisdiction where the State Property is located. Notice shall be given by posting on the Commission website and in the *Texas Register*. The posting shall generally describe the Project or Proposal; identify its location; summarize its nature, timing and scope; and include such other and additional information as required by law.

(d) In addition to the public notices required in this section, not later than the 30th day before the date the Commission is scheduled to meet and vote on a Project or Proposal, the Commission and the Division must:

(1) place the Project or Proposal on the Commission's meeting agenda to provide the public with notice of the meeting and an opportunity to comment; and

(2) present sufficient information to the Commission members to enable the members to adequately prepare for the meeting and to address the members' questions and concerns.

§121.5. Confidentiality.

The Commission is subject to Texas Government Code, Chapter 552, also known as the Texas Public Information Act (the "Act"). The Act gives the public the right to request access to government information and to receive information subject to statutory exceptions, including confidentiality as provided by the Act or other law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 19, 2014.

TRD-201400772

Kay Molina

General Counsel

Texas Facilities Commission

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 463-7220



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 26. FOOD AND NUTRITION DIVISION

The Texas Department of Agriculture (TDA or the department) proposes amendments to Chapter 26, Subchapter C, Division 1, §26.30, concerning the Nutrition Outreach Program; Division 2, §§26.41 - 26.46, concerning the Expanding the 3E's Grant Program; and Division 3, §26.54 and §26.55, concerning the Establishing the 3E's Grant Program, administered by the department. In 2009, TDA was charged with administering a Nutrition Outreach Program to promote better health and nutrition programs and to prevent obesity among Texas children. In response, TDA created two grant programs, the Best Practices in Nutrition Education Grant Program and the Nutrition Education Grant Program. TDA administered these programs in 2010 and 2011, at which time the department updated the program names to Expanding the 3E's Grant Program and Establishing the 3E's Grant Program, respectively.

TDA has evaluated the benchmarks of success for each of these programs as administered over the past four years with the goal of maximizing the impact of each dollar granted statewide in order to realize the core goals of the programs - health and nutrition programs and preventing obesity among Texas children. TDA determined that revisions to focus and refine the grant program objectives would drive results toward these goals. Specifically, TDA has determined that the best use of grant funds is to assist schools and organizations who want to implement nutrition education through coordinated school health (CSH) programs, but have thus far been unable to do so due to lack of

available funding. By partnering with CSH schools and operations, grant funds can reach their intended audiences, supplement existing programs, enhance existing best practices, and meet program goals to benefit Texas children. The proposed amendments make changes to update definitions and requirements to allow more flexibility in eligibility to expand program participation, make the rules consistent for both the Expanding the 3E's and Establishing the 3E's grant programs, and remove selection criteria from the rules.

The Texas Education Agency (TEA) is responsible for making available a list of CSH programs that meet specific criteria recommended by a panel of experts and approved by the Commissioner of Education. These amendments are proposed to allow school campuses more flexibility in implementing nutrition education programs, including the use of CSH programs, create more uniform, quantifiable measures and to clarify administration for both grant programs.

Bryan Daniel, Administrator for the Trade and Business Development Division of the department, has determined that, for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, as amended.

Mr. Daniel has also determined that for the first five years that the proposed amendments are in effect, the public benefit of the proposed amendments will provide more flexibility to school districts in implementing nutrition education programs, create more uniform, quantifiable measures, clarify administration of the department's 3E's grant programs, and add transparency to the process of expending grant funds. There will be no effect on microbusinesses, small businesses or persons required to comply with the amended sections, as proposed; therefore, no regulatory flexibility analysis is required.

Written comments on the proposal may be submitted to Karen Reichek, Director of Contracts and Grants for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

#### SUBCHAPTER C. 3E'S GRANT PROGRAMS

##### DIVISION 1. NUTRITION OUTREACH PROGRAM

###### 4 TAC §26.30

The amendment to §26.30 is proposed under the authority of the Texas Agriculture Code, §12.0027, which provides the department with the authority to develop a nutrition outreach program and adopt rules as necessary to administer an outreach program.

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

*§26.30. Statement of Authority and Purpose.*

The Texas Department of Agriculture is authorized, by §12.0027, of the Texas Agriculture Code, to administer and implement a Nutrition Outreach Program to promote better health and nutrition programs and prevent obesity among children in this state. The objective of the program is to increase awareness of the importance of good nutrition, especially for children, and to encourage children's health and well-being [well being] through education, exercise, and eating right.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400823

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: April 6, 2014

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



## DIVISION 2. EXPANDING THE 3E'S GRANT PROGRAM

### 4 TAC §§26.41 - 26.46

The amendments to §§26.41 - 26.46 are proposed under Texas Education Code, §38.026, which provides the department with the authority to establish a grant program for best practices in nutrition education and to adopt rules as necessary to administer the program.

The code affected by the proposal is the Texas Education Code, Chapter 38.

#### §26.41. Definitions.

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

(1) Best practice--An activity or program [~~currently~~] provided by the applicant that promotes or provides nutrition education, including programs that integrate planned, sequential strategies, activities and/or services designed to promote the optimal physical, emotional, social and/or educational development of children.[:]

[(A) Addresses one of four focus areas:]

[(i) increasing appeal and acceptability of meals;]

[(ii) enhancing and increasing nutrition education efforts;]

[(iii) increasing participation in meal program; or]

[(iv) increasing nutritional value of school meals; and]

[(B) Addresses one of three audiences:]

[(i) student population;]

[(ii) parent and teacher population; or]

[(iii) the community.]

(2) - (4) (No change.)

(5) School campus--An individual public or charter school in the state of Texas[, subject to the administration of its governing Texas school district, whether such district is independent, consolidated, or common].

#### §26.42. Statement of Purpose.

The program is designed to award grants to Texas public school campuses that can clearly demonstrate use or implementation of best practices in nutrition education for children.

#### §26.43. Eligibility.

In order to be eligible under the program, an applicant must be a [public] school campus in Texas in good standing with the department.

#### §26.44. Application Procedure.

(a) The department shall issue a request for applications [proposals], to be published in the *Texas Register* [during each fiscal year for which funds are available for implementing the program].

[(b) Public school campuses which can demonstrate current use of best practices in nutrition education are eligible to apply.]

(b) [(e)] The application shall be in a form prescribed by the department.

(c) [(d)] The application submitted to the department shall:

(1) be fully and legibly completed;

(2) be submitted in a timely manner;

(3) be signed by an authorized individual;

(4) contain, at a minimum, the following required information:

(A) the applying school campus and district name and address;

(B) the name and title of a primary contact person who may be contacted during normal business hours;

(C) a detailed description of the proposed project, including how the project will be incorporated into the program services and a timeline of proposed activities [existing best practice which is the basis for the grant application];

(D) the estimated number of children to be reached by the proposed activity/project if the grant is awarded;

(E) [(D)] a description of how quantifiable results will be measured if the grant is awarded; and [have been demonstrated by the best practice;]

[(E) the current budget for the best practice activity/program;]

(F) a proposed budget for use of grant funds. [including how these funds will supplement, improve, or expand the current best practice activity/program, if received; and]

[(G) a clear description of how the best practice will be expanded, improved or otherwise enhanced if the applicant receives grant funds in response to its application.]

#### §26.45. Selection Criteria.

(a) (No change.)

(b) The department shall review applications [proposals] and may appoint review panel(s) to evaluate them [proposals].

(c) - (e) (No change.)

(f) Evaluation criteria shall be included in the request for applications. [include, but are not limited to:]

[(1) best practice criteria set out by the department;]

[(2) percentage of students eligible to receive free/reduced lunch at applying school campus; and]

[(3) whether the best practice already is or is designed to become a sustained or recurring activity using the grant funds, if awarded.]

#### §26.46. Permitted Use of Grant Funds.

The expenditure of grant funds by a grant recipient shall be documented and the funds used only for expenses reasonably related to the implementation, supplementation, improvement, or expansion of the best practice for which the grant was awarded.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400824

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: April 6, 2014

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



### DIVISION 3. ESTABLISHING THE 3E'S GRANT PROGRAM

#### 4 TAC §26.54, §26.55

The amendments to §26.54 and §26.55 are proposed under Texas Human Resources Code, §33.028, which provides the department with the authority to establish a grant program for nutrition education and to adopt rules as necessary to administer the program.

The code affected by the proposal is the Texas Human Resources Code, Chapter 33.

#### §26.54. *Application Procedure.*

(a) The department shall issue a request for applications [~~proposals~~], to be published in the *Texas Register* [~~during each fiscal year for which funds are available for implementing the program~~].

(b) (No change.)

(c) The application submitted to the department shall:

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

(4) contain the following required information:

(A) - (B) (No change.)

(C) a detailed description of the proposed project, including how the project will be incorporated into the program services and a timeline of proposed activities;

~~[(D) a detailed description of the educational benefits of the project, including how the project will improve the children's understanding of nutrition;]~~

~~[(D) [(E)] the estimated number of children to be reached by the proposed activity/project if the grant is awarded;~~

~~[(E) [(F)] a description of how quantifiable results will be measured if the grant is awarded; and~~

~~[(F) [(G)] a proposed budget for use of grant funds, if awarded.~~

#### §26.55. *Selection Criteria.*

(a) (No change.)

(b) The department shall review applications [~~proposals~~] and may appoint review panel(s) to evaluate applications [~~proposals~~].

(c) Evaluation criteria shall be included in the request for applications.

~~[(c) Preference will be given to projects that are:]~~

~~[(1) unique in nature;]~~

~~[(2) address the issues of child nutrition and child nutrition education; and]~~

~~[(3) target one of the following audiences:]~~

~~[(A) students/participants;]~~

~~[(B) parents and staff; or]~~

~~[(C) the community; and]~~

~~[(4) incorporate physical fitness activities.]~~

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400825

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: April 6, 2014

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



## TITLE 7. BANKING AND SECURITIES

### PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

#### CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

##### 7 TAC §80.201

The Finance Commission of Texas (the Commission) proposes amendments to 7 TAC §80.201, concerning Loan Status Forms.

The proposed amendments are to the figures in §80.201(a) and (b). In general, the purpose of the proposed amendments is to correct the placement of language in the figures. The language itself remains the same.

Douglas B. Foster, Commissioner, Texas Department of Savings and Mortgage Lending, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of amending this rule.

Commissioner Foster has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendments will be clarification of language in the figures. There will be no effect on individuals required to comply with the rule as proposed. There will be no adverse economic effect on small or micro businesses.



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

The amendments are proposed under Texas Finance Code, §156.102, which grants rulemaking authority to the Commission.

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

*§80.201. Loan Status Forms.*

(a) Except as otherwise provided by subsection (c) of this section, when provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §80.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:

Figure: 7 TAC §80.201(a)

(1) Any additional aspects of the loan as long as not misleading;

(2) Any additional items that the originator has reviewed in determining conditional qualifications; or

(3) Any additional terms, conditions, and requirements.

(b) When provided to a mortgage applicant, written notification of loan application approval on the basis of credit worthiness, but not on the basis of collateral, shall include the information in Form B, Figure: 7 TAC §80.201(b). This information can be provided by utilizing Form B or an alternate form that includes all of the information found on Form B. Either form may be modified by adding the additional information permitted by subsection (a)(1) - (3) of this section, or disclosure of fees charged. A disclosure of fees charged, on Form B or an alternate form, does not serve as a substitute for any fee disclosure required by state or federal laws or regulations.

Figure: 7 TAC §80.201(b)

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 21, 2014.

TRD-201400806

Caroline C. Jones

General Counsel

Texas Department of Savings and Mortgage Lending

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 475-1297



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

## SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 85, Subchapter A, §§85.101 - 85.104, 85.202, 85.203, 85.205, 85.206, 85.208, 85.210, 85.211, 85.301, 85.303, 85.304, 85.306, 85.401 - 85.403, 85.405 - 85.408, 85.410, 85.412, 85.418 - 85.421, 85.423, 85.503, 85.601 - 85.604, 85.607, 85.702, and 85.703, concerning Rules of Operation for Pawnshops. The proposed changes affect rules contained in Division 1, concerning General Provisions; Division 2, concerning Pawnshop License; Division 3, concerning Operation of Pawnshops; Division 4, concerning Operation of Pawnshops; Division 5, concerning Inspections and Examination; Division 6, concerning License Revocation, Suspension, and Surrender; and Division 7, concerning Enforcement; Penalties.

In general, the purpose of the amendments to 7 TAC Chapter 85, Subchapter A is to implement changes resulting from the commission's review of Rules of Operation for Pawnshops under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 85, Subchapter A was published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7735). The commission did not receive any comments on the notice of intention to review.

The majority of the rules in Chapter 85, Subchapter A are being amended. Many of the amendments provide clarification and consistent terminology. Other revisions serve to incorporate changes in agency procedures and streamline processes. Most of the changes are technical in nature, including improvements in grammar and punctuation, deletion of unnecessary language, updates to citations and internal references, and changes in formatting. Any pawnshop rule not included in this proposal will be maintained in its current form.

The agency held a stakeholders meeting to discuss a list of revisions to improve the pawnshop rules. Stakeholders provided valuable discussion and input during the meeting. The agency later distributed an early draft of these proposed changes to interested stakeholders for review. The agency believes that the participation of stakeholders in the rulemaking process has greatly benefited this proposal. The agency has incorporated comments received on the draft that will further clarify and refine these rule changes.

The individual purposes of the amendments to each section are provided in the following paragraphs. Specific explanation is included with regard to new substantive language, substantive changes in language, and significant formatting amendments. The remaining changes throughout all sections consist of minor revisions to formatting, grammar, punctuation, and other technical corrections. The technical changes will be summarized more generally.

Section 85.101, Purpose and Scope, includes two instances where "chapter" has been replaced with "subchapter" due to the relocation of these rules since the last rule review. This change is recurring throughout Subchapter A of Chapter 85. In addition to §85.101, the following rules also contain proposed amendments to provide the consistent use of "subchapter": §§85.102, 85.103, 85.205, 85.402, 85.503, 85.603, 85.604, 85.607, and 85.703.

Section 85.102 provides general definitions to be used throughout the subchapter. In §85.102(9) and (12), the term "Operator"

is defined and used in the section. This term had previously referred to pawnshop operators that were not owners or licensed pawnbrokers themselves. As this definition is no longer necessary, paragraphs (9) and (12)(l) are proposed for deletion from the rule. As a result, the remaining paragraphs and subparagraphs have been renumbered and relettered accordingly.

In addition, §85.102 has experienced minor revisions relating to use of consistent terminology and improved punctuation. Two of these changes are recurring throughout the rules. First, the verb "shall" has been changed to "will" in the introductory paragraph. Similar changes have been made to other rules in Chapter 85, Subchapter A by replacing "shall" with either "will," "must," or "may," as appropriate, since the latter language is reflective of a more modern and plain language approach in regulations. Along with §85.102, the following rules contain proposed amendments to remove "shall": §§85.205, 85.304, and 85.418.

Second, the agency's acronym "OCCC," as currently defined in paragraph (8), is proposed to replace the use of "commissioner" in the definition of "Pawnbroker." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §85.102, the following rules include proposed amendments to replace "commissioner" with "OCCC": §85.208, Change in Form or Proportionate Ownership; §85.401, Hours and Days of Operation; and §85.421, Consumer Information.

The third change serves to improve the punctuation in §85.102. The hyphens have been removed from the phrases "privately held" and "publicly held," as these hyphens are deemed unnecessary by modern usage guides. Accompanied by §85.102, the following rules contain proposed changes to remove these hyphens: §85.202, Filing of New Application; §85.205, Transfer of License; and §85.208, Change in Form or Proportionate Ownership.

Section 85.104, Renewal Dates of Licenses, has been revised to incorporate the use of an online renewal system. The rule currently states that notices of delinquency will be mailed to pawnshops and pawn employees that do not timely pay their fees. The rule also states that timely fees must be postmarked by a certain date. However, in the near future, many of these notices and fees will be sent electronically. Thus, in §85.104(b) and (c), amendments are proposed to replace the verb "mailed" with "sent." The verb "sent" is used in the statute and will allow the notices to be sent electronically or by mail. Additionally, the term "submitted" will be added after "postmarked" in subsection (c) to reflect that fees may be paid electronically.

Section 85.202 describes the procedure for filing a new application for a pawnshop license, including instructions regarding what information is necessary on the application and what information must be filed with the application. This section has experienced several changes outlined in the following paragraphs.

In §85.202(a)(1)(A)(iii) regarding signatures on the application, the rule's current language requires each owner of a proprietorship and each general partner of a partnership to sign the application. As part of an online process, the agency will only require one owner and one partner, respectively, to sign for these applicants. The proposed amendments reflect that "the owner" of a proprietorship and "one general partner" of a partnership must sign the application.

Updates have been made to §85.202(a)(1)(J) to provide more precise citations to the Texas Business and Commerce Code

provisions concerning assumed name certificates, along with other minor changes.

In §85.202(a)(2)(C) concerning the map that must be submitted by applicants, the current paragraph has been reformatted into itemized elements to provide better clarity. The required survey has been given its own subparagraph in proposed (D), and the remaining subparagraphs have been relettered accordingly.

Additionally, other technical corrections have been made throughout §85.202, including improved grammar and punctuation, deletion of unnecessary language, and improved internal references to rule provisions.

In §85.203(a)(3)(A) concerning relocation procedures, parallel changes have been made with regard to the required map filing that mirror the changes made in §85.202(a)(2)(C).

Section 85.205, Transfer of License, has experienced certain changes similar to those proposed in §85.202, Filing of New Application. These changes include the use of "subchapter" and removal of unnecessary hyphens.

In §85.205(a), which defines "transfer of ownership," the rule currently states: "a 'transfer of ownership' does not include a change in proportionate ownership as defined in §85.208 of this title." However, §85.208(c)(2) contains an exception where a transfer has been required by the current language. Consequently, proposed revisions in §85.205(a) add a reference to the exception in §85.208(c)(2) to provide more clarity to licensees.

In §85.206(a), concerning the initial review of an application, the rule's current language indicates that notice will be sent regarding complete applications. However, agency practice is to send notice of incomplete applications, along with the information necessary for the application to be accepted as complete. Amendments are proposed to conform the rule with current agency practice. Revised subsection (a) as proposed is as follows: "A response to an application will ordinarily be made within 14 calendar days of receipt stating if the application is incomplete and specifying the information required for acceptance." Changes have also been made to subsections (b) and (g) to improve internal citation references.

Section 85.208 describes what action a licensee must take when it changes the proportion of ownership in or the form of the licensed entity and lists the time frame within which the licensee must notify the agency. When changes in organizational form and mergers of parent entities do not change the principal parties who own the business, amendments are proposed in subsections (a) and (b) to clarify when transfers are required and eliminate unnecessary transfer applications. In §85.208(a), the proposed amendments state that the exact same owners must still own the business for a change in organizational form to only require a license amendment as opposed to a transfer application.

In §85.208(a) and (b), notification of these changes in organizational form and parent mergers that do not affect licensee ownership have been streamlined to the filing of a license amendment. Licensees have also been provided additional time to notify the agency of these actions. The proposed amendments to §85.208 are consistent with rule revisions previously adopted for other industries regulated by the agency and will provide consistency in the licensing process.

Along with §85.210, the following sections have experienced changes to improve grammar and clarity: §§85.202, 85.203, 85.205, 85.208, 85.211, 85.304, 85.401, 85.402, 85.405,

85.407, 85.418, 85.421, 85.601, 85.604, and 85.702. Language that is no longer necessary has been deleted from §85.210 and §85.301.

Several changes are proposed for §85.211, Fees, including revisions to improve grammar and punctuation, remove unnecessary language, provide clarification, and incorporate online processes. These changes are described in the following paragraphs.

Section 85.211(d) regarding fingerprint processing is no longer necessary, as fingerprint fees are currently paid to a third party. Thus, subsection (d) is proposed for deletion from the rule and the remaining subsections have been relettered accordingly.

Section 85.211(e)(1)(A) currently states that an annual assessment of a "fixed fee of \$625" is required for each pawnshop, as well as a "volume fee of \$0.05 per each \$1,000 loaned" as provided in subsection (e)(1)(B). Also, subsection (e)(2) states a minimum annual assessment amount for each active pawnshop license. As the agency has often been able to discount annual fees, the following changes are proposed in subsection (e): a "fee not to exceed \$625," a "volume fee not to exceed \$0.05 per each \$1,000 loaned," and the deletion of subsection (e)(2). These changes will allow discounted annual fees as appropriate.

In §85.211(f) regarding license amendments, the rule's current language does not reflect revisions made to other rules. Hence, the proposed amendments revise subsection (f) in order to incorporate changes made to §85.205 and §85.208 relating to transfers and changes in ownership.

With respect to license duplicates in §85.211(g), licensees will soon be able to print license duplicates online at no charge. However, if the licensee requests that a duplicate be sent via mail, the \$10 fee will be required. Thus, the proposed amendments reflect a \$10 fee only if a duplicate license is requested to be sent by mail.

Changes are proposed in §85.303, Notification of Hiring, in order to incorporate a streamlined agency procedure. In the near future, pawn employee licenses will be printed with the address of the corporate office or "master file" address. Notification to the agency will only be required when a pawn employee begins working at a different pawnshop employer or entity. For example, a pawn employee starts work at XYZ Pawnshop and timely obtains a license. The employee may move from XYZ Pawnshop #1 to XYZ Pawnshop #2 without notification to the agency. However, if the employee later moves to ABC Pawnshop #3, notification is required.

In order to accommodate this change in agency policy, the proposal replaces "address" with "pawnshop entity," along with the deletion of the phrase "pawnshop with a" preceding the word "different." The resulting first sentence of §85.303(a) would require notification "when a licensed employee begins working at a different pawnshop entity from that printed on the employee's license." The agency believes that these changes will eliminate unnecessary notifications when pawnshop employees relocate to another store owned by the same company.

Certain technical corrections have been made to §85.304, Processing of Application, including the removal of "shall" in subsections (e) and (f) and updating a citation.

The revisions to §85.306 concerning fees for pawnshop employee licenses are parallel to those proposed in the pawnshop fee section, §85.211. These changes involve the proposed deletion of the fingerprint processing provision in subsection (b) and

the incorporation of online license duplicates in subsection (d). Further information is contained in the discussion under §85.211.

Section 85.401 regarding the hours and days of operation for pawnshops does not contain a reference to the related statutory provisions. Thus, the proposed amendments add language citing Texas Finance Code, §371.151 in order to provide clarification and assistance to licensees needing to comply with the statute and rules.

Section 85.402, Recordkeeping, does not currently address the maintenance of pawn tickets for items that have been seized by law enforcement or for pawn tickets that have been voided. Hence, the words "seized or voided" have been added to the end of §85.402(b) to clarify the last recorded event date for these types of pawn tickets.

Section 85.402(g)(2)(B) concerning the supplemental loan disposition report has been reorganized and improved grammatically to provide better clarity to licensees as to when this report is required. Additionally, §85.402(g)(2)(D)(i) and (ii) have been revised to include updated examples concerning the timing of the loan disposition report and the supplemental loan disposition report.

Along with §85.403, Insurance, the following rules contain changes to improve punctuation: §85.102, Definitions; §85.202, Filing of New Application; §85.211, Fees; §85.405, Pawn Transaction; §85.419, Hold Orders; and §85.702, Accepting Prohibited Merchandise. Section 85.405 outlines the requirements for a pawn transaction, including the prescribed form of the pawn ticket. Section 85.405 has experienced several changes, outlined in the following paragraphs, primarily to improve clarity and provide guidance.

The agency has encountered concerns regarding the presentation of a proper form of identification by persons redeeming pledged goods. To address these concerns, the following phrase is proposed for addition to the end of third sentence on the back of the pawn ticket: "and present a proper form of identification." The back of the pawn ticket is contained in Figure 2: 7 TAC §85.405(a)(1)(A).

The proposed amendments to §85.405(a)(3) serve to update citations to the Truth in Lending Act and Regulation Z so that they are more precise and reflect changes in federal law. Also in subsection (a)(3), in response to informal comments received the following sentence has been added: "A pawnbroker may, at the pawnbroker's option, choose to extend the last day of grace." This change clarifies that pawnbrokers may use a longer "last day of grace" (e.g., 60 days) and provides consistency with subsection (b).

In §85.405(a)(4)(D), the rule currently does not address what a pawnbroker should do if the hard card is requested by law enforcement. Thus, the following sentence is proposed for addition to the end of subparagraph (D): "To comply with an investigation by a law enforcement agency, a pawnbroker may provide the hard card of the pawn ticket to law enforcement, as long as a copy of the hard card is maintained in the sequential file of the pawnbroker."

Regarding the signature of the pledgor, the agency has encountered concerns where the pledgor has signed in the wrong area of the pawn ticket, i.e., in the redemption area and not the pledgor's signature line. The rule currently does not address the signature requirement. To provide clarity on this issue, this proposal

adds new paragraph (7) to §85.405(a) in order to specify the requirement that pledgors must sign on the signature line.

In relation to voided pawn tickets, the agency has encountered situations where voided pawn tickets have been marked with the phrase "reprint" or other phrases indicating that the ticket was voided. The rule's current language only provides one option, stating that voided pawn tickets must be clearly marked with the term "VOID." The proposed amendments to §85.405(d) add language to clarify that pawnbrokers may mark voided pawn tickets with other similar phrases indicating that the tickets were voided.

Section 85.406, Law Enforcement Reporting, includes minor revisions in subsection (b)(1). The more encompassing term of using a "disk" for electronic reporting has been added, with the removal of outdated terminology.

Section 85.407 provides the prescribed form and content of the Memorandum of Extension that pawnbrokers must use to document the extension of the maturity date. The current form required certain technical and formatting corrections to provide better clarity. The current form also contains unnecessary language relating to the amount due at redemption.

This proposal includes two acceptable forms for the memorandum of extension. Figure: 7 TAC §85.407(a)(1) primarily maintains the format of the current figure, but incorporates the required technical corrections. Figure: 7 TAC §85.407(a)(2) contains a more modern format and removes the unnecessary language. Pawnbrokers may use either form. Subsection (b) includes corresponding changes regarding the section's expansion to allow two forms, along with improvements in grammar. Also in §85.407(b), the following sentence is proposed for addition to permit a specific modification to the form in subsection (a)(1): "If a pawnbroker uses the form provided in Figure: 7 TAC §85.407(a)(1), the information regarding the amount due at redemption may be deleted."

In §85.408, Presentation of Pawn Ticket, the following sentence has been added to the beginning of subsection (d): "Upon redemption of the pledged goods or the renewal of the pawn ticket, the person presenting the pawn ticket for redemption or renewal must sign the original pawn ticket in the properly designated field of the pawn ticket unless the original pledgor has signed a lost pawn ticket statement." As with the signature line requirement added to §85.405(a), this clarification to §85.408(d) provides that the pawnbroker must require the pledgor to sign the original pawn ticket at the time of redemption or renewal, except in the case of a lost pawn ticket.

Section 85.410, Lost or Destroyed Pawn Ticket, has also been clarified in subsection (c) to require either the original pledgor sign the lost pawn ticket statement or that a person with the legal capacity to represent the pledgor sign. The proposed amendments in §85.410(c) also provide guidance regarding situations when persons with the legal capacity to represent a pledgor redeem or renew a lost pawn ticket. Such persons include an administrator or executor of an estate, an attorney-in-fact, or a person appointed by a court. Supporting records must be maintained in either the original pawn ticket file or the numerical hard card file.

Section 85.412, Redemption by Mail, includes minor changes in subsection (b) to provide a more precise citation to the Texas Finance Code.

The Acceptance of Goods Model Policy contained in Figure: 7 TAC §85.418(a)(2) has been revised concerning two issues:

new merchandise and acceptable forms of identification. First, the current language in the model policy with regard to new merchandise only addresses new items "still in the box." The proposed revisions to the form clarify that "new merchandise" is "an item that has not been used by anyone else previously for its intended purpose." While the model policy continues the general rule prohibiting the acceptance of new merchandise, the proposed revisions outline two exceptions: (1) the seller or pledgor has a valid receipt or other evidence of ownership (as in the current rule); or (2) the seller or pledgor provides a signed and dated written statement of how the seller or pledgor came into possession of the item and that the seller or pledgor does not have a receipt. In response to an informal comment, this second exception has been added in order to accommodate the acceptance of new items received as gifts. Documentation of both exceptions must be maintained in the numerical pawn or purchase ticket file, as appropriate.

With regard to the forms of identification, the current language in the Acceptance of Goods Model Policy contained in Figure: 7 TAC §85.418(a)(2) does not include the certificate of identification from the Mexican Consulate ("certificado de matricula consular") as a valid form of identification for a pawn or purchase transaction. However, Texas Finance Code, §371.174(b) does allow the use of this type of identification. Also, the current model policy includes a "United States Immigration and Naturalization Service Identification," which refers to the prior title of this U.S. agency. The proposed changes to Figure: 7 TAC §85.418(a)(2) add the certificado de matricula consular and update the U.S. citizenship and immigration language so that the rule's model policy will be more consistent with the statutory language on acceptable forms of identification for pawn transactions. Proposed number 6 on the revised form uses broader language that encompasses current numbers 5 through 7.

The changes to the following sections involve technical corrections: §85.419, Hold Orders; §85.420, Purchase Orders; §85.421, Consumer Information; §85.423, Complaints and Inquiries Notice; and §85.503, Follow-Up Examination Fees. In particular, these revisions improve grammar, revise formatting, use consistent terminology, and provide clarity.

Section 85.601 describes the effect of criminal history information on applicants and licensees. Section 85.602 is the companion rule to §85.601 and contains information concerning the crimes directly related to the fitness for holding a license, as well as the mitigating factors that will be considered. To provide uniformity throughout these two related rules, the term "person" will replace the term "individual" in several instances. The use of "person" is consistent with the authorizing statutory provisions found in the Texas Occupations Code. "Person" also includes both natural individuals as well as legal entities that may have criminal history related to a license. In addition, the mitigating factors outlined in §85.602(b) have been revised in order to better track the statutory language found in Texas Occupations Code, §53.023.

Section 85.603, Reinstatement of an Expired Pawnshop License, includes technical corrections to maintain consistent terminology and update an internal rule reference.

Section 85.604 regarding revocation or suspension of a license has experienced changes that provide clarity, improved formatting, and more precise citations. In §85.604(b)(2) relating to character and fitness, the parties that must report certain criminal actions have been itemized into subparagraphs. Further clarification has been added by separating traffic violations and

ATF investigations and actions into their own paragraphs. In the proposed new location of §85.604(b)(4), the ATF provision also includes more precise references to two ATF forms and the corresponding citations within the Code of Federal Regulations for notices that must be reported to the agency. As a result of the changes in formatting, the remaining paragraphs have been renumbered accordingly.

The changes to the following sections contain technical corrections: §85.607, Hearings; §85.702, Accepting Prohibited Merchandise; and §85.703, Savings Clause. These amendments provide consistent terminology and improve grammar and punctuation.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of the changes from the previously enacted version of these rules will be that the commission's rules will be more easily understood by licensees required to comply with the rules and will be more easily enforced. The general substance of these rules has already been in effect, as the majority of the amendments involve clarification and technical corrections.

Due to the revision of forms provided by §§85.405, 85.407, and 85.418, there will be some anticipated costs to persons who are required to comply with the amendments as proposed. The anticipated costs would include the costs associated with producing new forms. The agency seeks to minimize these costs by allowing licensees to use the current forms for up to one year after these amendments become effective. Some of these costs are required, and other costs are optional, as outlined in the following paragraphs.

First, the proposed changes to §85.405 revise the back of the pawn ticket that must be used by all pawn licensees. The anticipated costs to purchase updated four-part pawn tickets are estimated to be \$0.10 - \$0.15 per new ticket.

Second, regarding the proposed amendments to §85.407, Memorandum of Extension, these changes are optional as individual pawn entities may choose whether to have a practice of extending the maturity date beyond the last day of grace recorded on the pawn ticket. For licensees that do not use memorandums of extension, there will be no fiscal implications for those licensees. For licensees who opt to commonly extend the maturity date using memorandums of extension, the anticipated costs to produce new forms will depend on which of the two new formats they select, either Figure: 7 TAC §85.407(a)(1) or (a)(2). The figure contained in subsection (a)(1) merely includes technical corrections and is substantially similar to the current form. In contrast, the figure provided in subsection (a)(2) has a more modern format and would be anticipated to include some programming changes. With either format, the agency anticipates that the costs to produce revised two-part memorandums of extension under the amended rule will not exceed \$0.05 - \$0.10 per new form.

Third, the proposed changes to the Acceptance of Goods Model Policy contained in §85.418 are also not required, as the revised figure is simply a model and not a mandated policy. For those licensees who elect to update their model policies in accordance with the proposed changes, there may be some nominal costs to licensees in order to comply, such as expenses related to creat-

ing and maintaining this two-page form and employee training to implement the revised form. These costs will vary widely among licensees depending on the number of employees who must sign a new policy, as well as the labor costs associated with supervisors or human resources personnel assigned to implement the new policy.

Some licensees who use or lease specialized computer software programs for their business may experience some additional costs. These costs are impossible to predict. The agency will attempt to lessen these costs by providing the software programmers with the text of the forms. Whether the programmers will charge an additional fee for a document they do not have to draft is also not predictable.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule amendments, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed amendments should that effect be adverse to small businesses.

Aside from the costs related to updating their forms as delineated in the preceding paragraphs, there will be no other effects on individuals required to comply with the amendments as proposed.

As noted earlier, the agency will permit licensees to use the current language on the forms up to one year after the rule changes become effective in order to deplete supplies of existing forms during a transition period. Additionally, Texas Finance Code, §371.006 contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, a delayed effective date for these rule changes will be included in the adoption publication.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

## DIVISION 1. GENERAL PROVISIONS

### 7 TAC §§85.101 - 85.104

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 371.

#### §85.101. Purpose and Scope.

(a) Purpose. The purpose of this subchapter [chapter] is to assist in the administration and enforcement of Texas Finance Code, Chapter 371, which may be cited as the Texas Pawnshop Act.

(b) Scope. This subchapter [chapter] applies to a person engaged in the business of:

- (1) lending money on the security of pledged goods; or
- (2) purchasing goods on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period.

§85.102. *Definitions.*

Words and terms used in this subchapter [chapter] that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this subchapter [chapter], will [shall] have the following meanings unless the context clearly indicates otherwise.

(1) Bank deposits--Cash on deposit in banks or in other federally insured depository institutions. The value of deposits will be reduced by any taxes or penalties that would be due and payable if the funds were withdrawn on the date of valuation.

(2) Book value--The dollar amount assigned to assets using generally accepted accounting principles (GAAP). In evaluating merchandise inventory, the lower of the cost or the market value of the asset method is generally used when determining book value.

(3) Commissioner--The Consumer Credit Commissioner of the State of Texas as defined in Chapter 14 of the Texas Finance Code.

(4) Facility--The physical space used or proposed for the use in [of] the operation of a pawnshop.

(5) Law enforcement agency--An agency of government having jurisdiction over ensuring compliance with the criminal statutes where the pawnshop is physically located.

(6) Merchandise inventory--Tangible personal property held by a pawnbroker or applicant for immediate sale in the pawnshop or proposed pawnshop.

(7) Month--The period from a date in one month to the corresponding date in the succeeding month. If the succeeding month does not have a corresponding date, the month ends on the last day of the succeeding month.

(8) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

[(9) Operator--A person or entity who manages the daily operations of a pawnshop. This term includes a party to a management agreement for oversight and supervision of the operations of the pawnshop on behalf of the owners of the pawnshop.]

(9) [(10)] Pawnbroker--A person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the OCCC [commissioner]. When general duties and prohibitions are described, pawnbroker also includes a pawnshop employee unless the context indicates otherwise.

(10) [(11)] Pledged goods--Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

(11) [(12)] Principal party--An adult individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:

- (A) proprietors, including spouses with community property interest;
- (B) general partners;

(C) officers of privately held [privately-held] corporations, including [to include] the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with the Texas Pawnshop Act;

(D) directors of privately held [privately-held] corporations;

(E) individuals associated with publicly held [publicly-held] corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held [privately-held]); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by the Texas Pawnshop Act. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) shareholders owning 5% or more of the outstanding voting stock;

(H) trustees and executors; and

[(I) operators; and]

(I) [(I)] individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§85.103. *Attempted Evasion of Subchapter [Chapter].*

A person may not use any device, subterfuge, or pretense to evade the application of this subchapter [chapter]. A device, subterfuge, or pretense includes any transaction that in form may appear on its face to be something other than a pawn transaction, but in substance meets the definition of a pawn transaction as defined in the Texas Pawnshop Act, §371.003(8).

§85.104. *Renewal Dates of Licenses.*

(a) Licensing period and renewal due date. A pawnshop license and a pawnshop employee license are effective from July 1 through June 30 of each year. The annual fees for pawnshop licenses and pawnshop employee licenses are due on June 1 of each year for the following July 1 through June 30 term.

(b) Notice of delinquency. If a pawnshop or pawnshop employee does not pay the annual fees by June 1, a written notice of delinquency will be sent [mailed] by June 15. The notice of delinquency will be delivered as follows:

(1) for pawnshops, the notice will be sent [mailed] to the address of the corporate office on file for the pawnshop;

(2) for pawnshop employees, the notice will be sent [mailed] to the employee license holder through the corporate office on file for the licensed entity who employs the pawnshop employee.

(c) Expiration of license. A pawnshop license and a pawnshop employee license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual fees for the following term have been paid. To be considered timely paid, the fees must be postmarked or submitted by June 30. June 30 is the end of the license term for each year.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 21, 2014.

TRD-201400799

Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 936-7621



## DIVISION 2. PAWNSHOP LICENSE

### 7 TAC §§85.202, 85.203, 85.205, 85.206, 85.208, 85.210, 85.211

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 371.

#### §85.202. *Filing of New Application.*

(a) An application for issuance of a new pawnshop license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for Pawnshop License.

(i) Location. A physical street address must be listed for the proposed location for which the applicant can show proof of ownership or an executed lease agreement. A post office box or a mail box location at a private mail-receiving service may not be used except for a physical location that does not receive general mail delivery. An application for a new license will not be accepted if the address or the full legal property description has not yet been determined or the application is for an inactive license.

(ii) Responsible person. The person responsible for the day-to-day operations of one or more of the applicant's proposed locations must be named. This person must be:

(I) an individual who has an ownership interest in the pawnshop license and is named on the application;

(II) a licensed pawnshop employee identified by license number; or

(III) an applicant for a pawnshop employee license with the date of application.

(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.

(I) If the applicant is a proprietor, the [each] owner must sign.

(II) If the applicant is a partnership, one [each] general partner must sign.

(III) If the applicant is a corporation, an authorized officer must sign.

(IV) If the applicant is a limited liability company, an authorized member or manager must sign.

(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interest must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(ii) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Limited partnerships. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 5% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(iv) Corporations. Each officer and director must be named. Each shareholder holding 5% or more of the voting stock must be named if the corporation is privately held [~~privately-held~~]. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(v) Limited liability companies. Each "manager," "officer," and "member" owning 5% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 5% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(vi) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(vii) All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

(C) Application Questionnaire. All questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Appointment of Statutory Agent and Consent to Service [Disclosure]. Each applicant must appoint a [The appointment of] statutory agent and consent to service to that agent [must be provided by each applicant]. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.

(E) Personal Affidavit. Each individual meeting the definition of "principal party" as defined in §85.102 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.

(F) Personal Questionnaire. Each individual meeting the definition of "principal party" as defined in §85.102 of this title must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment History. Each individual meeting the definition of "principal party" as defined in §85.102 of this title must provide an employment history. Each principal party should provide a continuous 10-year history, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of Experience. Each applicant for a new license should provide a statement setting forth the details of the applicant's prior experience in the pawn or credit-granting business. If the applicant or its principal parties do not have significant experience in the pawnshop business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant background, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Financial Statement and Supporting Financial Information.

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application submission. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete. All financial statements must reflect the net assets as defined in the Texas Pawnshop Act, §371.003 of at least the lesser of the following amounts:

(I) As required in the Texas Pawnshop Act, §371.072(a), \$150,000; or

(II) The amount required by the Texas Pawnshop Act, §371.072(b) as the license existed or should have existed under the law and rules in effect on August 31, 1999. A change in net asset

requirement occurs with respect to any change of ownership or other event causing a change in the net asset requirement that may have occurred prior to September 1, 1999. The change in the net asset requirement is effective as of the date of change of ownership or other event causing the change of the net asset requirement.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the [Personal] Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the [Personal] Financial Statement and the Supporting Financial Information. The [Personal] Financial Statement and Supporting Financial Information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(J) Assumed name certificates [Name Certificates]. For an applicant that does business under an "assumed name" as that term is defined in Texas Business and [§] Commerce Code, §71.002 [Chapter 71], an assumed name certificate [Assumed Name Certificate] must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and [§] Commerce Code, §71.002 [Chapter 71, as amended]. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated or limited partnership applicants. Incorporated or limited partnership applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and [§] Commerce Code, §71.002 [Chapter 71, as amended]. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(2) Other required filings.

(A) Fingerprints.



(i) For all persons meeting the definition of "principal party" as defined in §85.102 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (1)(B)(iii)(I) of this subsection does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are not required.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002[; as amended].

(B) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Texas Secretary of State and a certificate of good standing from the Texas Comptroller of Public Accounts.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of incorporation and any amendments;

(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of corporate meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the corporation identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly held [~~Publicly-held~~] corporations. In addition to the items required for corporations, a publicly held [~~publicly-held~~] corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(III) a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the company identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of company meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the company identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide:

(I) a certificate of authority to do business in Texas, if applicable; and

(II) a statement of where records of Texas pawn transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.

(viii) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.

(C) Map. Each applicant must provide a map that shows the following: [A map must be provided of the area where the proposed license will be situated graphically defining the site of the proposed pawnshop; the location, including the name and address, of each pawnshop within three miles of the location; and the scale at which the map was constructed.]

(i) the area where the proposed license will be situated;

(ii) the site of the proposed pawnshop;

(iii) the location, including the name and address, of each pawnshop within three miles of the site of the proposed pawnshop location; and

(iv) the scale at which the map was constructed.

(D) Survey. The commissioner may require a survey to determine the distance from the proposed pawnshop location to existing operating pawnshops.

(E) ~~[(D)]~~ Zoning. Each applicant must file a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site.

(F) ~~[(E)]~~ Lease agreement or proof of ownership. Each applicant must file an executed lease agreement, deed, or other evidence that the entity has control of the proposed site.

(G) ~~[(F)]~~ Proof of general liability and fire insurance. Each applicant must file proof of insurance as required by ~~[§]~~ §85.403 of this title (relating to Insurance). The policy must explicitly cover loss of pledged goods.

(H) ~~[(G)]~~ Bond. The commissioner may require a bond under ~~[the]~~ Texas Pawnshop Act, §371.056, when the commissioner finds that this would serve the public interest. When a bond is required, the commissioner will give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(b) Subsequent applications. If the applicant is currently licensed and filing an application for a new location, the applicant must provide the information that is unique to the new location including the Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement, a map of the area where the proposed license will be situated as provided in subsection (a)(2)(C) of this section ~~[graphically]~~, a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site, a lease agreement or proof of ownership, and proof of general liability and fire insurance as provided in subsection (a)(2)(G) ~~[(a)]~~ of this section. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

(c) Distances will be measured in a direct line despite travel patterns and natural or manmade obstacles and will be measured from front door to front door. The commissioner may require a survey to determine distances from the proposed pawnshop location to existing operating pawnshops. In examining the distance requirements of a proposed pawnshop, the existence or location of an inactive license will not be considered in the determination of the distance requirements. An application for a new license may not be approved unless the eligibility requirements are met and the proposed facility is within:

(1) a county with a population of less than 250,000 according to the most recent decennial census regardless of distance from another operating pawnshop;

(2) a county with a population of 250,000 or more according to the most recent decennial census and the pawnshop is not less than two miles from another operating pawnshop.

#### §85.203. *Relocation.*

(a) Definition. As used in §371.059 of the Texas Pawnshop Act and in this section, the "relocation of a licensed pawnshop" means:

(1) the act of moving an existing licensed operating pawnshop from its existing location to a new location;

(2) the activation of an inactive license for purposes of establishing and operating a pawnshop at a facility.

(b) Approval of relocation. A pawnshop may not be relocated without the prior approval of the commissioner. An application for relocation must be filed as prescribed by this section before a pawnshop may begin operation at a new location.

(c) Filing requirements. An application for relocation must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. The application for relocation must include the following:

(1) Application for Relocation.

(2) Financial Statement and Supporting Financial Information. If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, a new Financial Statement is required. The instructions in §85.202 of this title (relating to Filing of New Application) are applicable to this filing.

(3) Other required filings.

(A) Map. Each applicant must provide a map that shows the following: ~~[A map must be provided of the area where the proposed license will be situated graphically defining the site of the proposed pawnshop, the location, including the name and address, of each pawnshop within three miles of the location, and the scale at which the map was constructed.]~~

(i) the area where the proposed license will be situated;

(ii) the site of the proposed pawnshop;

(iii) the location, including the name and address, of each pawnshop within three miles of the site of the proposed pawnshop location; and

(iv) the scale at which the map was constructed.

(B) Survey. The commissioner may require a survey to determine the distance from the proposed pawnshop location to existing operating pawnshops.

(C) ~~[(B)]~~ Zoning. Each applicant must file a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site.

(D) ~~[(C)]~~ Lease agreement or proof of ownership. Each applicant must file an executed lease agreement, deed, or other evidence that the entity has control of the proposed site.

(E) ~~[(D)]~~ Proof of general liability and fire insurance. If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, the applicant must file proof of insurance as required by ~~[§]~~ §85.403 of this title (relating to Insurance) ~~[must be filed]~~. The policy must explicitly cover loss of pledged goods.

(d) Engaging in business. An applicant may not advertise the opening of a relocated pawnshop prior to approval, except that a pawnbroker who intends to relocate a pawnshop may, beginning 90 days or less prior to the projected date of relocation, post a sign inside the existing shop and give customers a written notice of the anticipated relocation pursuant to subsection (e) of this section.

(e) Notice to customer. A written notice of relocation must be given to each pledgor whose pledged goods will be moved. Five days prior to relocation the pawnbroker must mail written notices to each pledgor who has not been given a written notice prior to that date. A notice must identify the pawnshop, both the old and the new locations, the telephone number of the new location, and the date the relocation is effective. The commissioner may modify the notification requirement if the relocation adversely affects pledgors. The modification may require the pawnbroker to extend the maturity date of pawn transactions or waive the collection of pawn service charges which may accrue af-

ter relocation. No relocation may be made which will adversely affect pledgors to the extent that redemption is unreasonable or impossible due to the distance between the locations. The commissioner may approve notification by signs in lieu of notification by mail if no pledgors will be adversely affected. When a relocation also involves a transfer of ownership, the buyer may agree to assume responsibility for compliance with this subsection.

(f) Relocation distances. Distances will be measured in a direct line despite travel patterns and natural or manmade obstacles, and will be measured from front door to front door. The commissioner may require a survey to determine distances from the proposed pawnshop location to existing operating pawnshops. In examining the distance requirements of a proposed pawnshop, the existence or location of an inactive license will not be considered in the determination of the distance requirements. An application for relocation may not be approved unless the eligibility requirements are met.

(1) If the proposed facility is within a county with a population of less than 250,000 according to the most recent decennial census, there is no distance requirement from another operating pawnshop;

(2) If the proposed facility is within a county with a population of 250,000 or more according to the most recent decennial census and:

(A) if the pawnshop was licensed and was not operating, it may locate not less than one mile from an operating pawnshop;

(B) if the pawnshop has been operating continuously at its current location for at least three years, it may locate within one mile of its current location regardless of distance from another operating pawnshop;

(C) if the pawnshop has been in operation, it may locate not less than one mile from an operating pawnshop.

(g) Pawn transactions. If the pawnbroker is only transferring pawn transactions from one licensed location to another licensed location, the pawnbroker must comply with subsection (e) of this section and provide, if requested, a list of pawn transactions transferred. This list of transferred pawn transactions must include the pawn ticket number and the full name of the pledgor.

#### §85.205. *Transfer of License.*

(a) Definition. As used in this subchapter [~~chapter~~], a "transfer of ownership" does not include a change in proportionate ownership as defined in §85.208 of this title (relating to Change in Form or Proportionate Ownership), except for changes meeting the requirements of §85.208(c)(2). Transfer of ownership includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(3) any change in ownership of a licensed limited partnership interest:

(A) in which a limited partner owning 5% or more relinquishes that owner's entire interest;

(B) in which a new limited partner obtains an ownership interest of 5% or more;

(C) in which a general partner relinquishes that owner's entire interest; or

(D) in which a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 5% or more of the outstanding voting stock in a privately held [~~privately-held~~] corporation;

(B) in which an existing stockholder owning 5% or more relinquishes that owner's entire interest in a privately held [~~privately-held~~] corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately held [~~privately-held~~] corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held [~~publicly-held~~] corporation;

(5) any change in the membership interest of a licensed limited liability company:

(A) in which a new member obtains an ownership interest of 5% or more;

(B) in which an existing member owning 5% or more relinquishes that member's entire interest; or

(C) in which a purchase or acquisition of control of 51% or more of any company which is the parent or controlling member of a licensed limited liability company occurs;

(6) any acquisition of a license by gift, devise, or descent; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of paragraphs (1) - (6) of this subsection, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No pawnshop license may be sold, transferred or assigned without written approval by the commissioner.

(c) Filing requirements. An application for transfer of a pawnshop license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §85.202 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §85.202 of this title are applicable to these filings. The applicant must also submit [~~In addition,~~] evidence of transfer of ownership as described in paragraph (2) of this subsection [~~must also be submitted~~].

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the Application for Pawnshop License, Application Questionnaire, Disclosure of Owners and Principal Parties, a new Financial Statement, and a lease agreement or proof of ownership, as provided in §85.202 of this title.

The instructions in §85.202 of this title are applicable to these filings. Other information required by §85.202 of this title need not be filed if the information on file with the OCCC is current and valid. The applicant must also submit ~~[In addition,]~~ evidence of transfer of ownership as described in paragraph (2) of this subsection ~~[must also be submitted].~~

(2) Evidence of transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate licensee has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(d) Permission to operate. No business under the license may ~~[shall]~~ be conducted by any license transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the transferee the authority to operate under the transferor's license pending approval of the transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the business. The permission to operate must be submitted before the transferee takes control of the licensed operation. The agreement must ~~[shall]~~ set a definite period of time for the transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer.

#### §85.206. Processing of Application.

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt ~~[stating that the application is accepted for filing or]~~ stating that the application is incomplete and specifying the information required for acceptance.

(b) Application acceptance. An application will not be accepted until it contains the appropriate fees and substantially all of the items required in accordance with §85.202 ~~[[§85.202]~~ of this title (relating to Filing of New Application), §85.203 ~~[85.203]~~ of this title (relating to Relocation), or §85.205 ~~[85.205]~~ of this title (relating to Transfer of License) as appropriate.

(c) Complete application. An application is complete when:

(1) the application conforms to the statutes, rules, and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(d) Competing application. An application in a county with a population of 250,000 or more will be acted upon based on the chrono-

logical order in which the application was accepted pursuant to subsection (b) of this section. A competing application may not be granted until a final ruling on any preceding competing application has been made.

(e) Notice of application and protest procedures. A notice of the application will be mailed to each pawnshop licensee in the county of the proposed location. The notice will state a date and time, 10 working days following the date of notice, by which any interested person may request a hearing. Any pawnbroker who believes that the applicant's proposed pawnshop will significantly affect that pawnbroker's current business may submit a sworn petition to be admitted as a party in opposition to an application for a new or relocated pawnshop. The sworn petition must contain facts relevant to the eligibility of the applicant and how the protesting pawnshop licensee will be affected by the approving of the proposed application. The commissioner will admit a protesting pawnshop licensee as a party if the protestor can show that it would be significantly affected by the granting of the license and if the protestor can show facts relevant to the eligibility of the applicant. A copy of the sworn petition will be delivered to the applicant and certification of that delivery will be made to the commissioner at the time of filing. A person may appear, present evidence, and be heard on a license only if the person has filed a sworn petition and been accepted as a party by the commissioner.

(f) Decision on application. The commissioner may approve or deny an application.

(1) Approval. The commissioner will approve the application upon payment of the appropriate fees and a finding of the eligibility and statutory location requirements.

(A) Eligibility requirements.

(i) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information described in §85.601 of this title (relating to Effect of Criminal History Information on Applicants and Licensees) and the applicant's conduct and activities as described in §85.602 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

(ii) A belief that the pawnshop will be operated lawfully and fairly. In evaluating this standard, the commissioner will consider an applicant's background and history. If the commissioner questions the applicant's ability to meet this standard, the commissioner may require further conditions, such as probation, to favorably consider an applicant for a license.

(iii) Financial responsibility. In evaluating the financial responsibility of an applicant, the commissioner may investigate the history of an applicant and the principal parties of the applicant as to the payment of debts, taxes, and judgments, if any, and handling of financial affairs generally.

(iv) Experience. In evaluating experience, the commissioner will consider the applicant's background and history as well as the personnel that the applicant plans to use in the operation and management of the pawnshop.

(v) General fitness to command the confidence of the public. The applicant's overall background and history will be considered. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.

(vi) Net assets. Net assets are calculated by taking the sum of current assets and subtracting all liabilities either secured by those current assets or unsecured. Liabilities not included in the calculation are those liabilities that are secured by assets other than current

assets including subordinated debt. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that assets other than current assets are sufficient to secure the debt.

(B) Distance requirement. A pawnshop within a county with a population of 250,000 or more must not be less than two miles from an existing pawnshop or if the application is for a relocation it must meet the requirements in §85.203(f)(2) of this title.

(2) Denial.

(A) Application incomplete 30 days after deficiency notice sent. If an application has not been completed within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(B) Failure to demonstrate requirements. The commissioner may also deny an application when the applicant fails to demonstrate the eligibility requirements or the applicant fails to meet the distance requirements.

(g) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. Also, upon a proper and timely protest pursuant to subsection (e) of this section, a hearing will be set. This hearing will be conducted within 60 days of the date of the appeal or protest unless the parties agree to an extension of time or the administrative law judge grants an extension of time pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and Chapter 9 [§9-1 et seq.] of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision either approving or denying the license.

(h) Processing time. The commissioner will ordinarily approve or deny a license application within 60 days after the date the application is complete. The commissioner may take more time if previous competing applications are on file, the placement of a reinstated expired pawnshop license would have an impact on the approval of an application, or where other good cause exists as defined by Texas Government Code, §2005.004 for exceeding the established time periods in this section.

§85.208. *Change in Form or Proportionate Ownership.*

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from sole proprietorship to corporation) that results in the exact same owners still owning the business, the licensee must advise the OCCC [commissioner] in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §85.211 of this title (relating to Fees) [10 calendar days by filing the appropriate transfer application documents as provided in §85.205 of this title (relating to Transfer of License)]. In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of incorporation) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §85.205 of this title (relating to Transfer of License). If the [A] merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §85.211 of this title [requires a

transfer application pursuant to §85.205 of this title]. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 [10] calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection or the requirements of §85.205(a)(4) or (5) of this title, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require written notification to the OCCC [commissioner] when the cumulative ownership change to a single entity or individual amounts to 5% or greater. This subsection does not apply to a publicly held [publicly-held] corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held [publicly-held] parent corporation, although a transfer application may be required under §85.205 of this title.

(2) A proportionate change in which an owner that previously held under 5% obtains an ownership interest of 5% or more, requires a transfer under §85.205 of this title.

(d) Notice deadline. A notice filed in connection with a change in proportionate ownership may be filed in advance but must be filed with the OCCC [commissioner] no later than 10 calendar days following the actual change.

§85.210. *License Status.*

(a) Inactivation of active license. A licensee may cease operating a pawnshop and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Written notification must be submitted [Notification must be filed on the Inactive Pawnshop License Notification] or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, the fee for amending the license, a certification that no loans will be made or collected under the license until it is activated, a notice to pledgors that pawn loans are being relocated, and a plan ensuring pledged goods are made available for redemption. If an active license is not being used for the active operation of a pawnshop, the commissioner may unilaterally place the license in inactive status. A licensee must continue to pay the annual assessment fees for an inactive license as outlined in §85.211 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. To activate [Activation of] an inactive license the holder of the inactive license must comply with the relocation requirements set forth in §85.203 of this title (relating to Relocation).

(c) Voluntary surrender of license. Subject to §85.606(b) of this title (relating to Surrender of License), a licensee may voluntarily surrender a license by providing written notice of the cessation of operations, a request to surrender the license, and [by submitting] the license certificate. A voluntary surrender will result in cancellation of the license.

(d) Expiration. A license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees are paid as per §85.104 of this title (relating to Renewal Dates of Licenses). A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.

§85.211. *Fees.*

(a) New licenses. A \$500 nonrefundable [non-refundable] investigation fee is assessed each time an application for a new license is

filed. ~~The [In addition, the]~~ applicant is also [initially] required to pay the initial assessment fee required by subsection (d)(5) ~~[(e)(6)]~~ of this section. This assessment fee will be refunded if the application is not approved.

(b) Subsequent licenses. A \$250 nonrefundable ~~[non-refundable]~~ investigation fee is assessed each time an application for an additional [a new] license of an existing licensee is filed or if the application involves substantially identical principals and owners of a licensed pawnshop. ~~The [In addition, the]~~ applicant is also [initially] required to pay the initial assessment fee required by subsection (d)(5) ~~[(e)(6)]~~ of this section. This assessment fee will be refunded if the application is not approved.

(c) License transfers. An investigation fee of \$500 for the first license transfer and \$250 for ~~[on]~~ each additional license transfer sought simultaneously is required. If the application involves substantially identical principals and owners of a licensed pawnshop, then the fee is \$250 for the first license transfer. License transfer fees are non-refundable.

~~[(d) Fingerprint processing. A non-refundable fee as prescribed by the commissioner will be charged to recover to costs of investigating each principal party's fingerprint record. This fee must be paid for each fingerprint record filed with applications for new licenses or license transfers.]~~

(d) ~~[(e)]~~ Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensed pawnshop of:

(A) A fee not to exceed ~~[fixed fee of]~~ \$625; and

(B) A volume fee not to exceed ~~[of]~~ \$0.05 per each \$1,000 loaned as calculated from the most recent annual report as described in §85.502 of this title (relating to Annual Report).

~~[(2) The minimum annual assessment for each active license will be no less than \$625.]~~

(2) ~~[(3)]~~ The maximum annual assessment for each active license will be no more than \$1,200.

(3) ~~[(4)]~~ The minimum annual assessment for each inactive license will be no less than \$250.

(4) ~~[(5)]~~ A pawnshop license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid.

(5) ~~[(6)]~~ Upon approval of a new pawnshop license pursuant to §85.206 of this title (relating to Processing of Application), the first year's fixed fee will be \$625.

(e) ~~[(f)]~~ License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license in a county with a population of less than 250,000, changing the assumed name of the licensee, ~~changing the organizational form or proportionate ownership that results in the exact same owners still owning the business and does not require a transfer under §85.205(a)(4) or (5) of this title (relating to Transfer of License) or §85.208(c)(2) of this title (relating to Change in Form or Proportionate Ownership), providing notification of a new parent entity, or relocating an office in a county with a population of less than 250,000. An activation or relocation in a county with a population of 250,000 or more will require a \$250 investigation fee and other fees as may be required of a new license applicant.~~

(f) ~~[(g)]~~ License duplicates sent by mail. The fee for a license duplicate ~~to be sent by mail~~ is \$10.

(g) ~~[(h)]~~ Each applicant for a new or relocated license will pay \$1.00 to the commissioner for each notice of application that is required to be mailed.

(h) ~~[(i)]~~ Costs of hearings. The commissioner or administrative law judge may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.206(g) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing. If it is determined that a protest is frivolous or without basis, then the cost associated with the hearing may be assessed solely to the protesting party.

(i) ~~[(j)]~~ Excess payment of fees. Any excess payment of fees received by the commissioner may be held to offset anticipated fees that may be owed by the licensee or applicant.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 21, 2014.

TRD-201400805

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 936-7621



## DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

### 7 TAC §§85.301, 85.303, 85.304, 85.306

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 371.

#### §85.301. Filing of New Application.

An application for issuance of a new pawnshop employee license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. All questions must be answered. Appropriate fees must be filed with the application, and the application must include the following:

(1) Application Form.

(A) Identifying information. The application must contain complete and accurate information identifying the applicant.

(B) Residence information. The application must report a continuous five-year residential history.

(C) Employment information. The application must report a continuous five-year employment history. If an applicant was unemployed for a period of time or was enrolled as a student during a period of time, the application must state that fact.

(D) Background and history. Any response about an employee's background and history must be true, correct, and complete. Additional information as required must be provided with the application.

(E) Signature. The applicant must sign and affirm the application as true, correct, and complete.

(2) Fingerprints.

(A) A complete set of legible fingerprints must be provided for each applicant. An individual who has previously been licensed by the OCCC is not required to provide fingerprints. The commissioner may require fingerprints of an employee if the commissioner believes that the individual has not been fingerprinted for a significant amount of time and believes a new set of fingerprints might provide additional information about the individual's criminal background. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(B) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Licensing and Regulation), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002[; as amended].

§85.303. *Notification of Hiring.*

It is the responsibility of a pawnshop to notify the OCCC within a reasonable period of time when a licensed employee begins working at a ~~[pawnshop with a]~~ different pawnshop entity [address] from that printed on the employee's license. A reasonable period of time is within one week from the issuance of the initial wage payment or in accordance with a standard preapproved reporting schedule.

§85.304. *Processing of Application.*

(a) Application acceptance. An application for a pawnshop employee license will not be accepted until it contains the appropriate fees and the items required in accordance with §85.301 of this title (relating to Filing of New Application).

(b) Complete application. An application is complete when:

- (1) the application conforms to the rules and published instructions;
- (2) all fees have been paid; and
- (3) all requests for additional information have been satisfied.

(c) Decision on application. The commissioner may approve or deny an application.

(1) Approval. The commissioner will approve the application upon payment of the appropriate fees and finding of the eligibility requirements. A license is the personal property of the employee and may not be retained by a pawnshop when an employee terminates employment with the pawnshop.

(A) Good moral character. In evaluating an applicant's moral character, the commissioner will consider criminal history information described in §85.601 of this title (relating to Effect of Criminal History Information on Licenses and Applications) and the applicant's conduct and activities as described in §85.602 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

(B) Good business repute. In evaluating an applicant's business repute, the commissioner will consider the applicant's background and history.

(C) Character and fitness to warrant belief that pawnshop will be operated lawfully and fairly. The applicant's overall background and history will be considered. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.

(2) Denial.

(A) Application incomplete 30 days after deficiency notice sent. If an application has not been completed within 30 days after notice of delinquency has been sent to the applicant, the application may be denied.

(B) Failure to demonstrate requirements. The commissioner may also deny an application when the applicant fails to demonstrate the eligibility requirements.

(d) Probationary license. The commissioner may conditionally approve an application for a probationary period of time when an employee's background and history indicate that confidence in the employee's ability to operate lawfully within the purposes of the Texas Pawnshop Act is questionable. If the commissioner determines that the terms of the probation are not being met, the commissioner may issue an order setting a hearing to suspend or revoke the employee's license.

(e) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. This hearing will ~~[shall]~~ be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and Chapter 9 [§9-1 et seq.] of this title. When a hearing is requested following an initial license application denial, the hearing will ~~[shall]~~ be held within 60 days after a request for a hearing is made unless the parties agree to an extension of time. The commissioner will ~~[shall]~~ make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

(f) Processing time. The commissioner will ~~[shall]~~ ordinarily approve or deny a license application within 60 days after the date the application is complete. The commissioner may take more time where good cause exists, as defined by Texas Government Code, §2005.004.

§85.306. *Fees.*

(a) New licenses. A \$25 nonrefundable investigation fee is assessed each time an application for a new license is filed.

~~[(b) Fingerprint processing. The nonrefundable fee to investigate each applicant's fingerprint record is \$40 per individual. This fee must be paid for each fingerprint record filed with applications.]~~

~~(b)~~ ~~[(e)]~~ Annual renewal fees. The annual renewal fee for a pawnshop employee license is \$15. The fee must be paid by June 30 each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

~~(c)~~ ~~[(4)]~~ License amendments. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation requires notice to the OCCC in the format prescribed by the commissioner.

~~(d)~~ ~~[(e)]~~ License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

~~(e)~~ ~~[(f)]~~ Cost of hearings. The commissioner or the administrative law judge may assess the cost of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §85.304(e) of this title (relating to Processing of Application), includ-

ing the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 21, 2014.

TRD-201400800

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 936-7621



## DIVISION 4. OPERATION OF PAWNSHOPS

### 7 TAC §§85.401 - 85.403, 85.405 - 85.408, 85.410, 85.412, 85.418 - 85.421, 85.423

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 371.

#### §85.401. Hours and Days of Operation.

(a) Public posting. A pawnshop's normal operating schedule must be posted so it is visible from the main public entrance. Hours of operation must comply with Texas Finance Code, §371.151. The schedule must include the hours for each day the shop will normally be open for business. Normal hours may include regular periods of closing during a day, such as a lunch time closing. The pawnshop must be open for business according to its posted schedule unless there is an approved closing pursuant to subsection (b) of this section.

#### (b) Approved closing.

##### (1) Holiday closing.

(A) A pawnshop may be closed on any federal holiday without notice.

(B) A pawnshop may close for a state or religious holiday after posting notice five calendar days prior to the date of closing. A notice of closing must be posted so it is visible from the main public entrance.

(2) Non-holiday closing. Pledgors must be advised of a closing five days in advance through use of a posted notice or the mailing of notices to pledgors prior to the date of a temporary, non-emergency closing. Any closing in excess of three business days requires notification to the OCCC [commissioner] 15 days in advance. A notice of closing must be posted so it is visible from the main public entrance. A day that the pawnshop is normally closed under its posted schedule is not a non-holiday closing as defined in this paragraph.

(3) Emergency closing. A notice of closing must be posted so it is visible from the main public entrance if a pawnshop is closed during regular posted hours due to an emergency. If the licensee knows when the pawnshop will reopen at the time of an emergency closing

[determinable], the notice must include the date and time when the pawnshop will reopen for business. As soon as reasonable, the OCCC [commissioner] should be notified in writing of closings extending over three business days in duration.

#### (c) Effect of closing.

(1) Non-holiday closing. The amount of pawn service charge scheduled to accrue on each pawn transaction from the date of non-holiday closing pursuant to subsection (b)(2) of this section until actual redemption must be waived for any person who states an attempt was made to redeem goods during the closing.

(2) All closings. If a pawnshop is closed on the "last day of grace," the pledgor or holder of the pawn ticket must have until the close of business on the next normal business day the pawnshop is open to redeem the pledged goods, renew, or extend the pawn transaction.

#### §85.402. Recordkeeping.

(a) Minimum records. Books and records must be sufficient to demonstrate compliance with Texas Finance Code, Chapter 371, and this subchapter [chapter] such that the books and records:

(1) allow for the documentation of all transactions to the extent that any single transaction may be re-created; and

(2) allow for the documentation of any set of transactions governed by Texas Finance Code, Chapter 371, to the extent that the set of transactions may be re-created.

(b) Record retention. Any required book, record, or instrument pertaining to a transaction, whether paper or electronic, must be available for a minimum of two years from the date of the last recorded event. Records must be available for inspection during normal business hours by the commissioner's authorized representative. For purposes of this section, the date of the last recorded event is the date a pledged item is taken into inventory, redeemed, [or] renewed, seized, or voided.

(c) Compliance file. A separate file must be maintained at each licensed location for all communications from the OCCC and for copies of correspondence and reports addressed to the OCCC. This file must include, at a minimum, electronic or paper copies of the current Texas Finance Code, Chapter 371, the last three examination reports, correspondence relating to compliance, compliance bulletins issued in the last two years, and current rules issued by the commissioner. A licensee will be considered to have maintained copies of the Texas Finance Code and current rules by having access to the websites containing the official versions of the current Texas Finance Code and the current Texas Administrative Code.

(d) Recordkeeping systems. A licensee must use a reviewed software system unless the licensee utilizes either a manual system that complies with subsection (f) of this section or a proprietary software system that is not sold or distributed to other licensees, unless the other licensees are affiliates of the licensee operating the proprietary system. All reviewed software systems in place on the effective date of this rule are not required to submit for re-review. A list of reviewed non-proprietary software systems that may be used by licensees will be maintained on the OCCC's [Office of Consumer Credit Commissioner's] website. A licensee or the software vendor must provide documentation of the non-proprietary software system to the OCCC [commissioner] that explains how the required information provided by subsection (e) of this section is maintained within the system.

#### (e) System documentation.

(1) Required information. A licensee or vendor seeking review of a system must make available a complete and detailed written description of the system proposed to be utilized, including:



(A) a statement specifying whether the system will be used in its entirety;

(B) operating manuals;

(C) instructions;

(D) a copy of the software to be used; and

(E) a full description of backup systems in place that will ensure business continuity and the protection of pledged goods.

(2) Amendments. Any change to a software system is required to meet the minimum reporting requirements as established by this section.

(3) Who must file. A non-proprietary software vendor may make a filing on behalf of a pawnbroker. It is the pawnbroker's responsibility, however, to ensure the system was reviewed before utilizing the system.

(4) Removal of reviewed status for non-proprietary software systems. The commissioner may remove a software vendor's name from the list of Reviewed Non-Proprietary Software Systems upon finding the system does not provide information as anticipated at the time of the review or does not comply with this section. Prior to the removal of the reviewed status for a non-proprietary software system, a pawnbroker or software vendor will be granted a reasonable time to make corrective modifications if it can be shown that the granting of time will not be detrimental to pledgors. Upon withdrawal of the system from the reviewed list, the use of the system must cease.

(f) Requirements of manual recordkeeping system. In a manual recordkeeping system, the pawn ticket must be a four-part form. Manual entries to the top copy must be legible and simultaneously reproduced on the remaining parts. The form must provide a perforated stub to be utilized in labeling and identifying pledged goods. Each part of the pawn ticket form must be numbered sequentially by the supplier of the pawn ticket form. The stub must be numbered simultaneously with the same sequential number. The portion of the pawn ticket made available to local law enforcement may, with the approval of the local law enforcement agency receiving it, omit the preprinted text of the pawn ticket. The portion of the pawn ticket maintained in the numerical pawn ticket file must provide an appropriately designated space for posting amounts paid on the pawn transaction.

(g) Requirements of electronic recordkeeping system. In an electronic recordkeeping system, the pawn ticket must be a three-part form. Entries made to the top copy of the pawn ticket must be legible and simultaneously reproduced on the remaining parts. The form must provide a perforated stub to be utilized in labeling and identifying pledged goods. Each part of the pawn ticket must be numbered sequentially by the supplier of the pawn ticket form unless the commissioner approves, in writing, an alternative method of numbering the pawn ticket. The stub must be numbered simultaneously with the same sequential number. The second part of the pawn ticket (law enforcement copy) may be omitted or properly destroyed (i.e., pawn ticket is completely shredded or incinerated) if the pawn and purchase ticket information is exchanged electronically, directly or indirectly, with the primary law enforcement agency in the jurisdiction that the pawnshop is located.

(1) Required electronic information. A pawnbroker who chooses to maintain pawn and purchase ticket information electronically must comply with the requirements of Chapter 371 of the Texas Finance Code and the rules governing electronic records. The information relating to the dates and amounts of all payments made on the pawn transaction, the final disposition or status of the pawn transaction (i.e., renewed, redeemed, voided, forfeited, or seized), and the final

disposition date, must be either manually recorded on the hard card pursuant to subsection (f) of this section, or electronically stored pursuant to this subsection. The final disposition or closing date is the date that the pawn transaction is renewed, redeemed, voided, or the pledged goods are forfeited by the pledgor or seized by a law enforcement agency. For the electronic system, the final disposition information must be stored and accessible for the entire record retention period required by Texas Finance Code, §371.152(b). If paragraph (2) of this subsection applies, the loan disposition report and supplemental loan disposition report must be timely printed or stored as an electronically imaged or archived record.

(2) Loan disposition report and supplemental loan disposition report. For purposes of this paragraph, a calendar month means every day from the first day of the month to the last day of the month.

(A) Loan disposition report. The loan disposition report is a listing of all pawn transactions that were made in a calendar month. The loan disposition report is printed or stored as an electronically imaged or archived record and is sorted by using the field of the date made as recorded on the pawn ticket.

(B) Supplemental loan disposition report. If the pawnbroker has a practice of extending the maturity date using a memorandum of extension or if the pawnbroker does not exercise the option to forfeit pledged goods on the day after the last day of grace recorded on the pawn ticket, then the pawnbroker must produce a supplemental loan disposition report. The supplemental loan disposition report is a listing of all pawn transactions that were closed (i.e., renewed, redeemed, voided, forfeited, or seized) in a calendar month. The supplemental loan disposition report must be [is] printed or stored as an electronically imaged or archived record and is sorted by using the field of the final disposition or closing date. [A supplemental loan disposition report is only required to be printed or stored as an electronically imaged or archived record if the pawnbroker extends the maturity date of the pawn transaction using a memorandum of extension or if the pawnbroker does not exercise the option to forfeit pledged goods on the day after the last day of grace recorded on the pawn ticket.]

(C) Content.

(i) Required information. The loan disposition report and the supplemental loan disposition report must contain the following:

(I) pawn or loan ticket number;

(II) name of pledgor;

(III) original date made;

(IV) original maturity date;

(V) loan amount or amount financed;

(VI) original pawn service charge;

(VII) final disposition or closing date;

(VIII) action taken to close the pawn transaction (i.e., renewed, redeemed, voided, forfeited, or seized);

(IX) if applicable, date and dollar amount of each memorandum of extension payment; and

(X) if applicable, dollar amount paid to redeem or renew the pawn transaction (i.e., amount paid itemized to show the allocation between the amount financed, pawn service charge, additional daily charges, and the lost pawn ticket statement).

(ii) Active or open transactions. The loan disposition report may contain active or open pawn transactions. If a pawn

transaction is active or open when the loan disposition report is printed or electronically imaged, the closing date should be left blank and the action taken to close the pawn transaction should be shown as "active" or "open."

(D) Timing. If the licensee is not manually recording the payment information on the hard cards pursuant to subsection (f) of this section, the loan disposition report and supplemental loan disposition report must be printed or stored as an electronically imaged or archived record every month.

(i) Loan disposition report. The loan disposition report must capture all pawn transactions, including active or open, that were made for a particular calendar month. The report must be produced four or five months after the completion of the reporting period, depending upon the length of the grace period. If a 30-day grace period is offered, the report must contain information for pawn transactions made four months prior. If a 60-day grace period is offered, the report must contain information for pawn transactions made five months prior. As an example, in May 2015 [2014], the loan disposition report must be printed or electronically imaged to include all pawn transactions that were made during the calendar month of December 2014 [2013] (60-day grace period) or January 2015 [2014] (30-day grace period).

(ii) Supplemental loan disposition report. The supplemental loan disposition report must be printed to capture all pawn transactions that were closed or have had a final disposition (i.e., renewed, redeemed, voided, forfeited, or seized) in the previous calendar month. As an example, in May 2015 [2014], the supplemental loan disposition report must include all pawn transactions that were closed in the previous month of April 2015 [2014] (i.e., April 1, 2015 [2014] to April 30, 2015 [2014]).

(3) Disaster recovery plan. A pawnbroker must maintain a sufficient disaster recovery plan to ensure that pawn and purchase ticket information is not destroyed, lost, or damaged.

(4) Access by OCCC personnel. The pawnbroker must provide reasonable access to a computer workstation capable of accessing and retrieving pawn and purchase ticket information throughout the examination or investigation conducted by the commissioner's representatives. A pawnbroker may provide the commissioner or the commissioner's representatives the same information in physical form as an alternative to reasonable access to a computer workstation.

#### §85.403. Insurance.

(a) Insurance provisions. General liability and fire insurance must be maintained in an amount sufficient to protect pledged goods as provided in Texas Finance Code, §371.154. The insurance policy must specifically cover the loss of pledged goods, including jewelry.

(1) General liability.

(A) At a minimum, the amount of general liability insurance coverage must be \$100,000 per occurrence from an insurance company with an A.M. Best rating of B+ or better.

(B) In addition, pawnshops operating more than one licensed location must purchase an additional \$10,000 of general liability insurance coverage per each operating location, excluding the first location.

(2) Fire insurance. Fire insurance coverage must be purchased from an insurance company with an A.M. Best rating of B+ or better as follows:

(A) for pawnshops not operating as part of a chain, fire insurance must be purchased in an amount not less than the lesser of:

(i) the amount of pawn loans receivable due the pawnshop at the close of business on December 31st of the preceding year; or

(ii) \$100,000;

(B) for pawnshop chains that operate more than one licensed location, fire insurance must be purchased in an amount not less than the lesser of:

(i) one-half the outstanding amount of the total pawnshop chain's pawn loans receivable due on December 31st of the preceding year; or

(ii) \$5 million.

(b) Variance. If a pawnshop's unique circumstances create a justifiable reason for not complying with subsection (a) of this section, the pawnshop may submit a written request for variance from this section. The request should explain in sufficient detail why compliance with the section is not feasible and the alternative measures that are proposed to manage the associated risk and protect pledged goods.

#### §85.405. Pawn Transaction.

(a) Pawn Ticket.

(1) Prescribed form.

(A) The front and back of the original pawn ticket are prescribed in the following two figures. Figure 1 contains the front of the original pawn ticket, and figure 2 contains the back of the original pawn ticket. The original portion of the pawn ticket must be given to the pledgor when the pawn transaction is made.

Figure 1: 7 TAC §85.405(a)(1)(A) (No change.)

Figure 2: 7 TAC §85.405(a)(1)(A)

(B) The prescribed back of the printed copy of the pawn ticket, as shown in the following figure, must be maintained in the numerical pawn ticket file.

Figure: 7 TAC §85.405(a)(1)(B) (No change.)

(2) Modifications of pawn ticket.

(A) Spacing. Spacing of the forms prescribed may be modified.

(B) Other changes. Any other changes to the prescribed forms must be approved, in writing, in advance, by the commissioner.

(3) Information required on pawn ticket. The pawn ticket must contain all information required in Texas Finance Code, §371.157, and satisfy the requirements of the Truth in Lending Act, 15 U.S.C. §§1601 - 1667f [§1601 et seq.], and Regulation Z, 12 C.F.R. Part 1026 [§226.1 et seq.]. The pawn ticket must disclose the date that is at least 30 days following the maturity date, and it must be captioned "last day of grace." A pawnbroker may, at the pawnbroker's option, choose to extend the last day of grace. The system used to create and store information about pawn transactions must include alphabetical or numerical characters sufficient to identify the pawnshop employee or owner writing the pawn ticket and handling the renewal or redemption of the pawn transaction. All parts of the pawn ticket form must be sequentially numbered by the automated information system unless produced manually in accordance with the requirements of §85.402(f) of this title (relating to Recordkeeping).

(4) Prescribed copies.

(A) Original copy. The top original copy is to be given to the pledgor. The original copy is to be presented upon redemption and filed with the numerical file of redemptions and renewals. The original copy of the pawn ticket, presented to the pawnbroker upon redemption of the pledged goods and renewal of the pawn transaction,

may be kept in chronological order by date if through the use of an automated system, the records pertaining to the pawn transaction may be readily located. Additionally, the original copy of the pawn ticket may be maintained in the numerical pawn ticket file.

(B) Alphabetical copy. The alphabetical copy is for use in maintaining an alphabetical index. The alphabetical copy may be omitted where an automated system is capable of producing the alphabetical index.

(C) Law enforcement copy. The law enforcement copy is for the use of law enforcement as defined in §85.406 of this title (relating to Law Enforcement Reporting). If the law enforcement agency is given all of the information on the pawn ticket electronically, this copy may be omitted.

(D) Hard card. The hard card is maintained in a sequential file in the records of the pawnshop. To comply with an investigation by a law enforcement agency, a pawnbroker may provide the hard card of the pawn ticket to law enforcement, as long as a copy of the hard card is maintained in the sequential file of the pawnbroker.

(5) Legible information. Reasonable procedures must be in place to ensure that all information on the original pawn ticket and all copies of the pawn ticket are legible.

(6) Identification of pledgor or seller.

(A) Proper identification. The pledgor must present a proper form of identification at the time of the pawn transaction. For purposes of this paragraph, any form of identification found in Texas Finance Code, §371.174(b) that is either current or has not been expired for more than one year will be considered acceptable. A pawnbroker is not required to take a photograph of any pledgor or seller for purposes of identification.

(B) Prohibited identification. The following forms of identification are not acceptable for the identification of a pledgor or seller:

(i) a driver's license issued by a foreign country;

(ii) a state identification card issued by an entity other than the Texas Department of Public Safety or comparable agency in another state;

(iii) an inmate or parolee identification card; and

(iv) a social security card.

(7) Signature line. A pawn ticket must contain a signature line for the pledgor. Upon issuance of a pawn ticket, the pledgor must sign on the signature line marked for the pledgor.

(b) Term of transaction. The maturity date of a pawn transaction may not be greater than one month from the date of the transaction. The "last day of grace" is a date no less than thirty days following the maturity day. A pawnbroker may, at the pawnbroker's option, choose to extend the last day of grace. The pawn loan will be considered to be an open pawn loan until the expiration of the last day of grace or until the pawnbroker exercises the option to take the pledged goods into inventory as provided in §85.414 of this title (relating to Forfeiture of Pledged Goods), whichever is later.

(c) Identification of pledged goods. A unique label for each item pledged must be produced in order to ensure that the correct item is returned to the pledgor.

(d) Voided pawn tickets. Voided pawn tickets must be clearly marked "VOID" or a similar phrase indicating that the pawn ticket was voided. [~~"VOID."~~] All printed parts of a voided pawn ticket except those produced for local law enforcement must be retained and filed

with the fourth part of the pawn ticket. The printed part must be made available to a local law enforcement agency.

(e) Standards for describing goods. Pledged goods and purchases must be accurately and fully described. All serial numbers, including vehicle identification numbers and boat hull numbers that are reasonably available, must be accurately entered on required documents. Any visible owner applied number or other identifying marks must be recorded on the original pawn ticket and all copies, and entered in the system that produces the pawn ticket. As applicable, the item type, brand, make, model number, engraving, inscriptions, color, size, length, unique markings, and design must be recorded. A pawnbroker is not required to take a photograph of any pledged or purchased goods for purposes of describing goods to comply with this subsection. A [In addition, a] record of the additional descriptors in paragraphs (1) - (4) of this subsection[.] must also be included if [as] applicable.

(1) Firearms. Descriptions of firearms must include caliber and type of firearm (e.g., handgun, rifle, shotgun, black powder weapon).

(2) Jewelry. Descriptions of jewelry must include weight, type of metal including purity, style, stones, and the gender of the person for which the item was manufactured. Stones must be described as to type, including results of electronic testing, color as apparent to the untrained eye, shape, number, size, and approximate weight. Class ring descriptions must also include school name and class year.

(3) Motor vehicles. Descriptions of motor vehicles must include the year of manufacture, model, body style, license plate number, and state of registration.

(4) Accessories. Descriptions of accessories must include the applicable information required within this subsection.

(f) Titled goods.

(1) Negotiation. Goods pledged on a pawn transaction, a motor vehicle, or other property having a certificate of title may be accepted. When entering into the pawn transaction, the pawnbroker must not permit or require the owner to endorse the title to effect the transfer.

(2) Limited power of attorney. If a pawn transaction involves titled property, the owner may be required to sign a power of attorney form appointing the pawnbroker as the owner's attorney-in-fact for the sole purpose of transferring the ownership of the property in the event the pledgor fails to pay the pawn transaction.

(3) Documentation. A notation of the location of powers of attorney, certificates of title, and registration receipts must be made on the printed copy of the ticket in the numerical pawn ticket file or an alternative filing method must be provided to facilitate retrieval of these documents.

(g) Items usually sold as a set in a retail transaction or pledged together with their accessories.

(1) Cannot require separate transactions if pawn service charge over maximum. Items usually sold as a set in a retail transaction or pledged together with their accessories may not be required to be split into separate transactions or that they be pledged separately where the result would be a total pawn service charge over the legal maximum for the single transaction.

(2) Pawn service charge for separate transactions. If items usually sold as a set in a retail transaction or pledged together with their accessories are split into separate transactions, the effective rate of the separate transactions must not be greater than the rate a single transaction would have produced.

(3) Items pledged on separate days. Items that may usually be sold as a set in a retail transaction or pledged together with their accessories, but which are pledged on separate days will not normally be considered to fall within the provisions in paragraph (2) of this subsection.

(4) Pledgor requests separate transactions. If a pledgor requests separate pawn transactions on items usually sold as a set in a retail transaction or pledged together with their accessories, a notation that request in the description field of the pawn ticket must be made and will not normally be considered to fall within the provisions in paragraph (2) of this subsection.

(h) Alphabetical file of pawn tickets. Either an automated or a manual system capable of allowing searches utilizing the pledgor's name in the case of a lost or destroyed pawn ticket must be maintained.

#### §85.406. Law Enforcement Reporting.

(a) Reporting requirements. The information on the pawn ticket must be made available to the law enforcement agency electronically or through the production of a separate copy of the pawn ticket.

(b) Suggested electronic reporting guidelines. These suggested guidelines are intended to give pawnshops considerable flexibility to fit individual needs while providing some guidance. Modifications to the guidelines may be made without the loss of protection from any liability defense. Electronic reporting is voluntary and should occur under mutually acceptable terms to the pawnbroker and the law enforcement agency. Information reported electronically should be transmitted by a method mutually acceptable to both the pawnshop and the law enforcement agency. The suggested guidelines are:

(1) the transmission be made using a disk [3-5 ~~in~~ ~~reusable~~ ~~diskette~~, ~~CD-ROM~~], flash drive, remote access to secure websites maintained by law enforcement, or remote access to secure bulletin boards or websites;

(2) the information be provided in comma-delimited ASCII text with field titles as the first record of the transmission;

(3) the information be sent in batches no smaller than the daily activity;

(4) the information include all purchase and pawn transactions in a single transmission; and

(5) the law enforcement agency not be given direct access to a pawnshop's computer system.

#### §85.407. Memorandum of Extension.

(a) Prescribed form and content. If an extension of a pawn transaction is made, a written memorandum must be used to document the extension of the maturity date. The memorandum of extension must be provided in one of the two prescribed formats as provided in Figure: 7 TAC §85.407(a)(1) or Figure: 7 TAC §85.407(a)(2) of this section [~~prescribed memorandum form is shown in the following figure~~]. The printed portions of the memorandum must be legible and all the information must be reproduced on all parts. [Figure: 7 TAC §85.407(a)]

(1) Memorandum of extension including amount due at redemption. The following figure provides an acceptable memorandum of extension that includes information regarding the amount due at redemption. Information regarding the amount due at redemption is optional on this form and may be deleted as authorized by subsection (b) of this section.

Figure: 7 TAC §85.407(a)(1)

(2) Memorandum of extension not including amount due at redemption. The following figure provides an acceptable memorandum of extension that does not include information regarding the amount due at redemption.

Figure: 7 TAC §85.407(a)(2)

(b) Modification of prescribed forms [~~form~~]. Modification of the spacing of the forms [~~form~~] is allowed. If a pawnbroker uses the form provided in Figure: 7 TAC §85.407(a)(1), the information regarding the amount due at redemption may be deleted. Other changes to the forms [~~form~~] must be approved by the commissioner[;] in writing and[;] in advance[; by the commissioner].

(c) Distribution of copies. The original memorandum must be given to the person paying for the extension or, if paid by mail, sent to the pledgor. The location of all memorandum copies relating to a particular pawn ticket must be documented:

(1) in the electronic system (if the memorandum of extension form can be reproduced in its actual original printed format); or

(2) in the numerical pawn ticket file.

(d) Pawn service charge. The daily rate of finance charge may not exceed 1/30th of the finance charge shown on the pawn ticket. The amount a pledgor pays for the extension may not exceed the maximum of the total amount that could be charged divided by the daily rate. The pledgor and pawnshop may negotiate any amount of pawn service charge for the extension not to exceed the maximum amount authorized by Texas Finance Code, Chapter 371, Subchapter D.

(e) Early redemption. If a pledgor negotiates an extension and subsequently pays a pawn transaction in full prior to the original maturity date, the original terms of the original pawn transaction are restored. The maximum pawn service charge that may be collected is calculated from the date of the original transaction to the date of redemption. Any charge collected for the extension must be credited against the total pawn service charge. Any remaining balance may be collected from the pledgor.

(f) Renewal or extension of open pawn transaction. Any open pawn transaction may be renewed by payment of pawn service charges accrued to the date of renewal or may be extended, unless the pawn ticket provides that the pawn transaction is not eligible for renewal or extension.

#### §85.408. Presentation of Pawn Ticket.

(a) Record of payment. A record of an amount collected in connection with a pawn transaction must be made immediately upon receipt. In a manual system, the payment notation must be made in the numerical pawn ticket file. If the amount of money received includes any costs for packing, shipping, or insuring goods redeemed by mail, the costs must be itemized.

(b) Identification of person presenting pawn ticket. The person presenting a pawn ticket for redemption must be identified by requiring the person to produce an acceptable form of identification unless the person is known and recognized as the pledgor. An acceptable form of identification for a person other than the pledgor must be any form of identification listed in Texas Finance Code, §371.174(b) that is either current or has not been expired more than one year. A record in the electronic system or on the original pawn ticket must be made including the type of identification, the name on the identification, and the identifying number presented by any person other than the pledgor.

(c) Receipt. A receipt for payment must be given upon request. A memorandum of extension form, properly completed as described in §85.407 of this title (relating to Memorandum of Extension), may serve as a receipt for payment of charges.

(d) Original pawn ticket. Upon redemption of the pledged goods or the renewal of the pawn ticket, the person presenting the pawn ticket for redemption or renewal must sign the original pawn ticket in the properly designated field of the pawn ticket unless the original pledgor has signed a lost pawn ticket statement. The original of each pawn ticket returned upon redemption must be promptly filed in the redemption and renewal file. For purposes of this subsection, the numerical file of redemptions and renewals is a file where the documents used to redeem pawn transactions are kept in sequential order or in chronological order by date if through the use of an automated system the records pertaining to the pawn transaction can be readily located. Separate lost pawn ticket statement forms or other documents taken to document a redemption or renewal must be filed with the numerical pawn ticket file or in the redemption and renewal file according to the sequential number of the related pawn ticket.

(e) Power of attorney. In the event the original pledgor desires to designate another person to redeem the pledged goods and the original pledgor has lost the pawn ticket, a proper power of attorney, which must include the pledgor's notarized signature, is required from the original pledgor designating the person for redemption. A power of attorney must be filed in the numerical pawn ticket file or the numerical index of redemptions and renewals.

*§85.410. Lost or Destroyed Pawn Ticket.*

(a) Notice of lost pawn ticket. When oral notification is received from a pledgor that the pledgor's pawn ticket has been lost or stolen, the pledgor must be instructed to give the notice in writing and informed that pledged items may still be taken into inventory after the last day of grace if the pawn transaction is not renewed, redeemed, or extended. The date and time the oral notification was received must be documented. If the pledgor is present in the pawnshop at the time of giving oral notice, the pledgor must be provided with a form to give written notice. If the suggested guideline in subsection (d) of this section is employed, the pledgor who gives oral notification should be informed that without a written statement of the lost pawn ticket, the goods will be surrendered to someone who properly presents the pawn ticket for redemption. A lost pawn ticket statement must be filed in the numerical pawn ticket file.

(b) Record of payment. If a payment is made in connection with the redemption of pledged goods or the renewal of a pawn transaction and a separate lost pawn ticket statement is used, the requirement may be satisfied by recording the payment on the front of the lost pawn ticket statement, as well as the date of the transaction and the amount of money actually received. The lost pawn ticket statement must be filed in the numerical pawn ticket file.

(c) Redemption or renewal procedure. Appropriate procedures must be employed to ensure that only a person with a valid claim to a pledged item is able to redeem that item. Upon receipt of written notice of a lost pawn ticket, the original pawn ticket is void. The written notice of a lost pawn ticket must be signed by the original pledgor or a person with the legal capacity to represent the original pledgor. A person with the legal capacity to represent the original pledgor includes: an administrator or executor of an estate, a person designated as an attorney-in-fact for the original pledgor with a valid power of attorney, or a person appointed by a court of competent jurisdiction. If someone other than the original pledgor signs the written notice of a lost pawn ticket, the pawnbroker must maintain copies of the supporting records (a copy of the will, power of attorney, or court order) in either the original pawn ticket file or the numerical hard card file.

(d) Suggested guidelines. These suggested guidelines are intended to give pawnshops considerable flexibility to fit individual needs while providing some guidance. Modifications to the guidelines may

be made without the loss of protection from any liability defense. When oral notification that a pawn ticket has been lost or stolen is received, the pledgor is instructed to give the notice in writing within the next two business days. If a person other than the pledgor presents the pawn ticket in an attempt to redeem the item prior to timely receiving written notice, it is suggested that:

(1) an immediate attempt to contact the pledgor by telephone be made in order to determine if the presenter has a valid claim to the item;

(2) a record of identifying information be made in the numerical file of loans, including name, identification number, address, and phone number, of the presenter of the pawn ticket;

(3) when ownership cannot be immediately determined, a request be made that the presenter of the pawn ticket return in a mutually agreeable time frame to redeem the merchandise and return the original pawn ticket to the holder; and

(4) all actions taken relating to the situation be documented in a clear manner to accurately record the events.

*§85.412. Redemption by Mail.*

(a) Procedure. A pledgor may redeem by mail by providing:

(1) the signed pawn ticket; and

(2) a photocopy of the identification used in making the pawn transaction.

(b) Acceptable alternatives. If the pawn ticket is unavailable, the pledgor may mail a request to redeem the pawn transaction. If a photocopy of the identification used in making the pawn transaction is unavailable, the pledgor may send a photocopy of any identification acceptable for redeeming pledged goods under Texas Finance Code, §371.174(b) [§371.174].

(c) Redemption period. A request for redemption must be honored within five business days unless prior written notice that the pawn ticket has been lost, destroyed, or stolen has been received.

(d) Method of payment. Payment by cashier's check, certified check, or money order may be required for:

(1) the principal amount of the pawn transaction;

(2) all pawn service charges due on the pawn transaction; and

(3) the charges authorized in subsection (e) of this section.

(e) Shipping, handling, and insurance charges. The pawnbroker is entitled to recover reasonable and necessary expenses involved in the packaging and shipping of goods and any additional charges to insure the goods. Goods must be insured during shipment for an amount determined by the pledgor. The pledgor may choose the carrier to use for shipment. Goods may be shipped cash on delivery (C.O.D.).

(f) Firearms. Shipments of firearms may only be made to a holder of a federal firearms license.

*§85.418. Acceptance of Goods.*

(a) Monitoring of transactions and customers.

(1) Type of goods offered. An item on which the serial number has obviously been defaced, altered, or removed may not be taken into pawn. An item previously taken in pawn in which the serial number has been previously documented may be repawned if proper documentation exists and can be accurately traced to the same item if the serial number on the item is missing, worn, defaced, or blurred due to normal wear and tear.

(2) **Written policy.** A written policy must be established for the acceptance of pledged goods. The policy must expressly identify situations which may involve the attempted pawn of stolen goods and must list procedures to be followed in order to avoid the acceptance of stolen goods. A copy of the policy must be provided to each employee. Each employee must sign a document acknowledging receipt and understanding of the policy. A copy of each signed receipt must be placed in the compliance file. Alternatively, a pawnshop may employ another systematic method of filing receipts that allows for the appropriate retrieval of records for inspection. A model policy may be found in the following figure.

Figure: 7 TAC §85.418(a)(2)

(3) **Acceptance of uniquely marked goods.** An item may not be accepted into pawn that is clearly marked in a manner that indicates ownership by a third party (e.g., rental company, motel, governmental body). An item marked in a manner that indicates ownership by a third party may, however, be accepted into pawn when the pledgor produces a valid receipt or other evidence of ownership of the item or the pawnbroker obtains independent verification. Independent verification may include records of phone calls to the third party with name, time, and verbal approval that are documented on the pawn ticket.

(4) **Responsibility.** The pawnbroker must monitor goods in order to identify and prohibit transactions involving stolen goods and must make reasonable efforts to avoid accepting stolen goods.

(5) **Coordination with law enforcement.** A pawnbroker must work with law enforcement agencies regarding matters relating to stolen goods and must aid in the prompt resolution of an official investigation by providing, if available:

(A) information to appropriate law enforcement officers (e.g., additional description of pledged and purchased goods, a physical description of the pledgor or seller, copies of all documents surrounding the transaction);

(B) physical inspection of the goods;

(C) copy of any [the] surveillance recording [tape] relating to the transaction;

(D) access to pawnshop employees for information; and

(E) cooperation with any court order.

(b) **Documentation of goods not lawfully possessed by pledgor.** Certain information must be maintained concerning pledged goods that a pledgor did not have the right to possess. The information may be recorded in the numerical pawn ticket file or in the automated records of the pawn transaction. Each record must be readily identifiable and available for examination. The record must include:

(1) pawn ticket number;

(2) specific goods concerned;

(3) person to whom the goods were released; and

(4) terms and conditions under which possession of the goods was relinquished (e.g., redeemed by owner, voluntarily returned without compensation, seized by law enforcement officers, awarded to another following a judicial hearing).

#### §85.419. *Hold Orders.*

(a) **Generally.** A law enforcement agency may place a hold order on property.

(b) **Suggested guidelines.** This section provides suggested guidelines for the placement of hold orders. These suggested guidelines are intended to give pawnshops considerable flexibility to fit individual needs while providing some guidance. Modifications to

the guidelines may be made without the loss of protection from any liability defense.

(1) A hold order should be placed in writing by a law enforcement agency. The term of a hold order should not exceed 60 days from the receipt of the written hold order. The law enforcement agency may extend the term of the hold order for additional 30-day [30 day] increments by notifying the pawnshop in writing. The hold order and all applicable extensions automatically terminate upon expiration.

(2) A hold order or extension should specify:

(A) name and address of the pawnshop;

(B) name, title, case number, and phone number of the responsible officer at the law enforcement agency;

(C) complete description of the property to be held, including model number and serial number, if applicable, and the related pawn or purchase ticket number;

(D) expiration date of the hold order or extension; and

(E) name of the law enforcement agency that prepared the investigative report and the associated number of the report.

(3) A written hold order may be transmitted to the pawnshop by a mutually agreeable method.

(4) Except as provided by this subsection, the property subject to a hold order should not be released, sold, redeemed, or disposed of, except under:

(A) release authorization from the official placing the item on hold;

(B) expiration of the hold order and any applicable extensions;

(C) court order, including a search warrant; or

(D) seizure by a law enforcement official.

(5) Property may be released to the custody of a law enforcement agency for use in a criminal investigation if the officer has furnished a written receipt for the property. The release of the property to the custody of the law enforcement agency is not considered to be a waiver or release of the pawnbroker's rights or interest in the property. Upon the earlier of the completion of the criminal investigation or the expiration of the hold order and any applicable extensions, the property should be returned to the pawnshop unless a court order provides for other disposition. If other disposition is ordered, the court may order the pledgor or seller to pay restitution in the amount received by the pledgor or seller for the property, plus accrued pawn service charges.

#### §85.420. *Purchase Transactions.*

(a) **Relevant pawn provisions.** Accepting goods in a purchase transaction must be done in compliance with all relevant administrative rules, in the context of the purchase transaction in the same manner as if the transaction were a pawn transaction. These rules include:

(1) §85.405(a)(5) of this title--Legible information;

(2) §85.405(a)(6) of this title--Identification of pledgor or seller;

(3) §85.405(c) of this title--Identification of pledged goods;

(4) §85.405(e) of this title--Standards for describing goods;

(5) §85.405(f) of this title--Titled goods;

(6) §85.406 of this title--Law Enforcement Reporting;

(7) §85.418 of this title--Acceptance of Goods; and

(8) §85.419 of this title--Hold Orders.

(b) Hold period [Period].

(1) Each item of personal property purchased from the general public must be held at the licensed pawnshop location from the purchase date before being modified, changed, sold, or disposed of in any manner for a period of:

(A) at least 20 days; or

(B) a period of less than 20 days if a local jurisdiction has enacted an ordinance that specifies the hold period.

(2) A reduced hold period of seven days or less may be agreed upon by the pawnbroker and the law enforcement agency if the pawn and purchase ticket information is exchanged electronically. The agreement for a reduced hold period must not conflict with any local ordinance and must be submitted to the commissioner in writing by and through the chief local law enforcement officer for the jurisdiction.

§85.421. *Consumer Information.*

(a) Consumer education. The OCCC [~~commissioner~~] will furnish each pawnshop, at the time of initial licensing, a display and printed materials that must be placed in a location clearly visible to the consumer from the register. The pawnshop must refill [~~assist the commissioner by refilling~~] the display as necessary by requesting additional copies from the OCCC.

(b) Crime victim assistance.

(1) Victim's request for assistance. A crime victim or the victim's representative may make an inquiry by presenting a copy of a law enforcement agency offense report that describes stolen property in a manner that would permit positive identification. The name of the department where the stolen property report was filed and a telephone number for the victim must be requested.

(2) Property search. When a victim's request for assistance has been received, a search must be made of all records of purchases and pawn transactions made on or subsequent to the date of loss. From the time of receipt of the request until the records search is completed, no property of the type described in the offense report may be released without examining the property to determine if it is the property of the victim.

(3) Report of findings. If stolen property has come into the pawnshop's possession, the law enforcement agency that originated the report must be notified. The stolen item must be placed on hold pursuant to §85.419 of this title (relating to Hold Orders) unless other instructions are received from the law enforcement agency. The pawnshop is not obligated to allow the redemption of items located pursuant to paragraph (2) of this subsection until the hold order has expired.

(4) Victim inspection. A pawnbroker is not required to permit a victim to examine the records of a pawnshop, the pledged goods of a pawnshop, or any property purchased by a pawnshop that [~~which~~] is not on public display.

(5) Crime victim assistance recordkeeping. Documentation on the offense report or on records filed with report must be made. The record of the report findings as required in paragraph (3) of this subsection must include the person to whom the report was given, the date and time of the report, and the nature of the report. The records must be retained in a manner which makes the reports readily available for examination.

§85.423. *Complaints and Inquiries Notice.*

(a) Definitions. "Privacy notice" means any notice that a pawnbroker gives regarding a consumer's right to privacy as required by a specific state or federal law.

(b) Required notice [~~Notice~~].

(1) The following notice must be given to let consumers know how to file complaints: "The (your name) is (licensed and examined or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: 800/538-1579. Fax No.: 512/936-7610. E-mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us."

(2) The required notice must be given in the language in which a transaction is conducted.

(3) The required notice must be included with each privacy notice. If a pawnbroker delivers a privacy notice simultaneously with the delivery of the pledgor's copy of the pawn ticket, the pawnbroker may fulfill the required notice delivery under this section by complying with paragraph (4) of this subsection.

(4) A notice is required on each pawn ticket of a licensed pawnbroker pursuant to §14.104, Texas Finance Code and §85.405 of this title (relating to Pawn Transaction).

(A) The text of the notice required by paragraph (1) of this subsection is acceptable to meet this requirement; or

(B) A pawnbroker may use the following notice: "TEXAS PAWNBROKERS ARE LICENSED AND REGULATED BY THE TEXAS CONSUMER CREDIT COMMISSIONER. FOR INFORMATION OR ASSISTANCE WITH ANY PAWN OR OTHER CREDIT PROBLEM CALL 1-800-538-1579."

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Leslie L. Pettijohn  
Commissioner

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## DIVISION 5. INSPECTIONS AND EXAMINATION

### 7 TAC §85.503

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 371.

§85.503. *Follow-Up Examination Fees.*

If a follow-up examination visit is required within nine months after a written deficiency report has been given as a result of a failure to comply with Chapter 371 of the Texas Finance Code, this subchapter

[chapter], or the special instructions section of the examination report, the charge for the follow-up examination will be limited to no more than three examiners at the hourly rate of \$100 per examiner.

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## DIVISION 6. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

### 7 TAC §§85.601 - 85.604, 85.607

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 371.

*§85.601. Effect of Criminal History Information on Applicants and Licensees.*

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a pawnshop license or an applicant for an employee license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a pawnshop license or an applicant for an employee license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character and the information gathered is relevant to the licensing or enforcement action decision as described in subsections (b) - (d) of this section.

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions must be disclosed. The applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information required to make a determination under subsection (d) of this section, including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that the person

[individual] has maintained a record of steady employment, has supported the person's [individual's] dependents, and has otherwise maintained a record of good conduct. At a minimum, the person [individual] must furnish proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects negatively on an applicant's honesty and moral character.

(c) Factors in determining whether conviction relates to occupation of pawnbroker. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner will consider the following factors, as specified in Texas Occupations Code, §53.022:

- (1) the nature and seriousness of the crime;
  - (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
  - (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person [individual] previously had been involved; and
  - (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.
- (d) Effect of criminal convictions involving moral character.

(1) The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee is a person [an individual] who has been convicted of any felony or a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 371. For purposes of this section, the following crimes are considered to be crimes involving moral character:

- (A) Fraud, misrepresentation, deception, or forgery;
- (B) Breach of trust or other fiduciary duty;
- (C) Dishonesty or theft;
- (D) Assault;
- (E) Violation of a statute governing pawnshops of this or another state;
- (F) Failure to file a required report with a governmental body, or filing a false report;
- (G) Attempt, preparation, or conspiracy to commit one of the preceding crimes; or
- (H) Attempt, preparation, or conspiracy to evade Texas Finance Code, Chapter 371 and its provisions or to evade the laws relating to the receiving or conveyance of stolen property.

(2) Effect of other criminal convictions. The commissioner may deny an application for a license, or revoke an existing license, if a principal party of the license applicant or holder has been convicted of a crime that directly relates to the duties and responsibilities of a pawnbroker. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §85.602 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

*§85.602. Crimes Directly Related to Fitness for License; Mitigating Factors.*

(a) Crimes directly related to fitness for license. Being a pawnbroker involves or may involve representations to borrowers and sellers, maintenance of accounts to make loans and replace lost or damaged



goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, a crime involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person [individual], or a crime involving failure to file a governmental report or filing a false report, is a crime directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders a person or an entity related to the person unfit to be a license holder, the commissioner will consider, in addition to the factors listed in §85.601 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the following factors, as specified in Texas Occupations Code, §53.023:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed [at the time of the commission of the crime];
- (3) the amount of time that has [the time] elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after [prior to and following] the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time served; and
- (6) the person's current circumstances relating to the present fitness for a license, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person, the sheriff and chief of police in the community where the person resides, and other persons in contact with the convicted person.

*§85.603. Reinstatement of an Expired Pawnshop License.*

If a pawnshop license expires as prescribed by §85.104 of this title (relating to Renewal Dates of Licenses) for failure to pay annual assessment fees, the OCCC [~~commissioner~~] will notify the pawnshop license holder by mailing notice to the current statutory agent on file via certified mail that the license has expired and that the licensee may not make or renew a pawn loan. The holder of the expired license may elect to reinstate the license by submitting the fees required by §85.211(d) [§85.211(e)] of this title (relating to Fees) and a \$1,000 reinstatement fee postmarked on or before December 27 of that same year. An expired pawnshop license holder may not conduct any licensed business at the formerly licensed location during the time the license is expired. Any unlicensed acts are subject to administrative action of the commissioner should the holder of the expired license not cease operations upon expiration of the license on July 1. An expired license is considered an operating pawnshop location for the duration of the period of reinstatement right for the purpose of statutory distance requirements.

*§85.604. Revocation or Suspension of Pawnshop License or Pawnshop Employee License.*

(a) Generally. The commissioner may initiate an administrative action for the reasons in subsection (b) of this section and assess any or all of the penalties in paragraphs (1) and (2) of this subsection:

- (1) revoke or suspend a license;
- (2) assess an administrative penalty.

(b) Basis for administrative actions.

(1) Eligibility. A pawnbroker or pawnshop employee who fails to maintain eligibility under the Texas Pawnshop Act and the ad-

ministrative rules promulgated by the commissioner[.] is subject to suspension or revocation.

(2) Character and fitness. A pawnbroker or a pawnshop employee must report to the commissioner knowledge of any arrest, charge, indictment, or conviction of any of the following filed with the OCCC: [person named on a pawnshop or pawnshop employee license or application filed with the commissioner.]

- (A) a principal party named on a pawnshop application;
- (B) a principal party named on a pawnshop license;
- (C) an individual named on a pawnshop employee application; or
- (D) an individual named on a pawnshop employee license.

(3) Traffic violations. Traffic violations and any action previously reported to the commissioner are not required to be reported.

(4) ATF investigations and actions. Any known investigation of potential violations by the pawnbroker of federal laws or rules relating to firearms must be reported to the commissioner, but this does not include compliance inspections by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). A notice of revocation, suspension, or imposition of civil fine issued by ATF [~~Form 4500 notice~~] against the federal firearms license must also be reported. Reports must include notices issued on ATF Form 4500 and ATF Form 4501 as provided by 27 C.F.R. §478.73 and §478.74, and must be made within three business days of receipt of the notice.

(5) [~~(3)~~] Failure to comply with the law. A pawnbroker or pawnshop employee who fails to comply with this subchapter [chapter] or the provisions of Texas Finance Code, Chapter 371, is subject to suspension, revocation, or an administrative penalty.

(6) [~~(4)~~] Accepting stolen property. A pawnbroker or pawnshop employee who knowingly or without exercise of due care accepts stolen property or accepts property which has been represented to be stolen without reporting it to law enforcement may be subject to suspension, revocation, or an administrative penalty. A pawnbroker or pawnshop employee who has personal knowledge of a pawnbroker or a pawnshop employee accepting stolen property without reporting it to law enforcement is subject to suspension or an administrative penalty.

(7) [~~(5)~~] Failure to comply with commissioner's order. A pawnbroker or pawnshop employee who fails to comply with an order of the commissioner is subject to suspension, revocation, or an administrative penalty.

(8) [~~(6)~~] Responsibility for compliance. Any licensed pawnbroker or pawnshop employee who knowingly or without exercise of due care violates the purposes of Texas Finance Code, Chapter 371, or this subchapter [chapter] is subject to suspension, revocation, or an administrative penalty.

(9) [~~(7)~~] Responsibility for acts of others. Any person who holds a pawnshop license will be responsible for the acts of its officers, directors, employees, and agents in the conduct of the pawnshop business.

*§85.607. Hearings.*

Hearings held under this subchapter [chapter] will be held in accordance with Administrative Hearing Process and Rules of Procedure in the Finance Commission Agencies, Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings (Chapter 9 of this title), the Administrative Procedure Act, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence.

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## DIVISION 7. ENFORCEMENT; PENALTIES

### 7 TAC §85.702, §85.703

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §371.006 authorizes the commission to adopt rules for enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 371.

#### §85.702. *Accepting Prohibited Merchandise.*

(a) Reasonable ground for revocation. Reasonable ground for revocation of the license exists when a pawnbroker or pawnshop employee, knowingly or without exercising due care, fails to prevent a transaction of stolen property, in violation of Texas Finance Code, Chapter 371 [violates Texas Finance Code, Chapter 371, by knowingly or without exercising due care fails to prevent a transaction of stolen property]. Should the commissioner find that no other ground is present on which to base a revocation of the license, the commissioner may agree to a suspension or an administrative penalty as set out in subsections (b) and (c) of this section.

(b) Individual violations. A pawnbroker or a pawnshop employee found to have taken items in violation of §85.418(a)(1) and (3) of this title (relating to Acceptance of Goods), is subject to the following penalty:

(1) If the violation results from the action of ownership or management, the pawnshop license will be suspended for one day per each item found on premises or the pawnshop may pay an administrative penalty per each item found on premises of:

(A) \$100 for the first violation;

(B) \$200 for the second violation subsequent to the date the first violation is cited;

(C) \$500 for a violation subsequent to the date the second violation is cited.

(2) If the violation results from the action of a pawnshop employee, the employee license will be suspended for one day per each item found on premises or the pawnshop employee may pay an administrative penalty of \$50 for each item found on premises.

(c) Multiple violations. A pawnshop that is found to have more than 10 violations of any of the provisions of §85.418(a)(1) and (3) of this title in a two-year [two year] period is subject to the following penalties in addition to the penalties of subsection (b) of this section:

(1) suspension of three days; or

(2) in lieu of suspension, an administrative penalty of \$1,000 for each day of suspension.

(d) Alternative resolution. If a pattern of violations indicates a lack of the management's affirmative duty to supervise its employees to prohibit violations of §85.418(a)(1) and (3) of this title, then forfeiture of the options in subsections (b) and (c) of this section will result. If the OCCC has independent proof of violations of §85.418 of this title, the pawnbroker or pawnshop employee may be subject to stronger administrative actions than required by this section.

#### §85.703. *Savings Clause.*

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 21, 2014.

TRD-201400803

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 936-7621



## PART 6. CREDIT UNION DEPARTMENT

### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS SUBCHAPTER E. DIRECTION OF AFFAIRS

#### 7 TAC §91.501

The Credit Union Commission (the Commission) proposes an amendment to §91.501 concerning Director Eligibility and Disqualification. The amendment requires the development and implementation of an annual plan for continuing education of directors.

The amendment is proposed to ensure that credit unions provide for the ongoing education of directors to achieve and maintain professional competence.

Stacey McLarty, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. McLarty has also determined that for each year of the first five years the proposed amendment is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. The agency is not aware of any effect on small or micro businesses as a result of adopting the amended rule. Any economic cost anticipated to the credit union system or to individuals for complying with the amended

rule, if adopted, is expected to be minimal, but cannot be calculated with certainty, as the amount of time and resources required for compliance depends on the specific characteristics of each credit union and director.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code, and under Texas Finance Code, §122.053, which sets forth the duties of directors, and under Texas Finance Code, §122.054, which directs the commission to establish qualifications for a director.

The specific sections affected by the proposed amended rule are Texas Finance Code, §122.053 and §122.054.

*§91.501. Director Eligibility and Disqualification.*

(a) Board Representation. The credit union's bylaws shall govern board selection and election procedures. No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any classification that results in a restriction or infringement upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union. In addition, each credit union shall adopt policies and procedures that are designed to assure that the elections of directors are conducted in an impartial manner.

(b) Qualifications. A member may not serve as director of a credit union if that member:

- (1) has been convicted of any criminal offense involving dishonesty or breach of trust;
  - (2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);
  - (3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;
  - (4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;
  - (5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;
  - (6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;
  - (7) has failed to complete and return a director application in accordance with subsection (c) of this section; or
  - (8) refuses to take and subscribe to the prescribed oath or affirmation of office.
- (c) Director application. Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection

of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.

(d) Director continuing education. Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate continuing education requirements and provide sufficient resources for directors to achieve and maintain professional competence. The policy shall include a provision requiring the credit union to prepare, on an annual basis, a continuing education plan for its Directors that is [should be] appropriate to the size and financial condition of the credit union and the nature and scope of its operations.

(e) Prohibited conduct. A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) Recall of director(s).

(1) Petition. Under procedures set out in the credit union's bylaws, members may request a special membership meeting to consider removing the entire board or individual directors for cause relating to serious mismanagement or a breach of fiduciary duties. The board shall conduct any resulting special meeting as prescribed in the credit union's bylaws.

(2) Membership Vote. The members of a credit union may remove a director by a vote of two-thirds of those members voting at the special meeting; provided, however, that:

(A) a separate vote is conducted for each director sought to be recalled;

(B) the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;

(C) all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and

(D) the affected director(s) is afforded an opportunity to be heard at such meeting prior to a vote on removal.

(3) Vacancy on the Board. If a vacancy occurs as a result of a recall, the vacancy shall be filled by the affirmative vote of a majority of the remaining directors. If the entire board is removed as a result of the recall, the members shall fill the vacancies at the recall meeting. Directors elected to fill a recall vacancy shall hold office only until the next annual meeting when any unexpired terms shall be filled by vote of the members.

(g) Absences. Any director who fails to attend three (3) consecutive regularly scheduled meetings without an excuse approved by a majority vote of the board, or who fails to attend six (6) regularly scheduled meetings during any twelve-month period following the director's election or appointment is automatically removed from office. A new person shall be appointed to fill any vacancies resulting from poor attendance within sixty days of the date of the meeting that led to the automatic removal. The commissioner in the exercise of discretion may extend the deadline for filling the vacancy.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400819

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 837-9236



### 7 TAC §91.502

The Credit Union Commission proposes amendments to §91.502 concerning director fees and expenses. The amendments clarify that reasonable meeting fees may be paid to directors, honorary directors, advisory directors, or committee members. The amendments require annual disclosure of fees to the membership. The amendment grants enforcement authority to the Credit Union Department to limit or prohibit meeting fees.

The amendments are proposed to ensure that director fees are appropriate for the institution and transparent to the members.

Stacey McLarty, General Counsel, has determined that for the first five-year period the amended 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.

Ms. McLarty has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Stacey McLarty, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code and under Texas Finance Code, §122.062, which limits the compensation a director may receive for services.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.062.

§91.502. *Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures.*

(a) Expense reimbursement. A credit union may reimburse out-of-pocket travel and related expenses that are reasonable and appropriate for the business activity undertaken. A credit union shall adopt a written board policy to administer and control travel expenses paid or incurred in connection with directors or committee members carrying out official credit union business.

(b) Payment of fees. Subject to the provisions of this rule, a credit union may pay a reasonable meeting fee to any of its directors, honorary directors, advisory directors, (hereafter referred to as directors) or [Directors and] committee members [may be paid reasonable fees, in accordance with written board policy,] for attending duly called meetings at which [for conducting] appropriate credit union business is conducted. Any credit union electing to pay any type of meeting fee shall annually disclose to the membership the fees paid in the prior calendar year and scheduled to be paid in the current calendar year. This disclosure may be provided to the members as part of the credit union's annual report as prescribed in §91.310 of this title (relating to Annual Report to Membership). A credit union, however, may not pay any [a] meeting fees [fee] to a director or committee member if the credit union is operating under a Net Worth Restoration Plan; or an order issued under Finance Code §122.257 or §122.258.

(c) Enforcement Authority; Prohibition. The commissioner may prohibit or otherwise limit or restrict the payment of meeting fees to directors or committee members if, in the opinion of the commissioner, the credit union has paid, is paying, or is about to pay meeting fees that are not reasonable under the circumstances. [Advance Notice of Payment of Fees. A credit union shall provide written notice to the Department of its intent to pay or modify director or committee member meeting fees at least 30 days prior to commencing the new or modified program. The written notice shall include a copy of the board policy, the proposed or revised fee schedule, and a description of the anticipated cost and the credit union's ability to absorb the increase in operating costs. The credit union shall provide any additional information requested by the commissioner.]

(d) Use of credit union equipment. A credit union may provide personal computers, access to electronic mail, and other electronic conveniences to directors during their terms of office provided:

(1) the board of directors determines that the equipment and the electronic means are necessary and appropriate for the directors to fulfill their duties and responsibilities;

(2) the board of directors develops and maintains written policies and procedures regarding this matter; and

(3) the arrangement ceases immediately upon the person's leaving office.

(e) Insurance. A credit union may, in accordance with written board policy, provide health, life, accident, liability, or similar personal insurance protection for directors and committee members. The kind and amount of these insurance protections must be reasonable given the credit union's size, financial condition, and the duties of the director or committee member. The insurance protection must cease upon the director or committee member's leaving office, without providing residual benefits beyond those earned during the individual's term on the board or committee.

(f) Review by board. A credit union shall implement and maintain appropriate controls and other safeguards to prevent the payment of fees or expenses that are excessive or that could lead to material financial loss to the institution. At least annually, the board, in good faith, shall review the director/committee member fees and director/committee member-related expenses incurred, paid or reimbursed by the credit union and determine whether its policy

continues to be in the best interest of the credit union. The Board's review shall be included as part of the minutes of the meeting at which the policy and the fees and expenses were studied. Fees and expenses shall be considered excessive when amounts paid are disproportionate to the services performed by a director or committee member, or unreasonable considering the financial condition of the institution and similar practices at credit unions of a comparable asset size, geographic location, and/or operational complexity.

(g) Guest travel. A credit union's board may authorize the payment of travel expenses that are reasonable in relation to the credit union's financial condition and resources for one guest accompanying a director or committee member to an approved conference or educational program. The payment will not be considered compensation for purposes of Finance Code §122.062 if:

- (1) it is determined by the board to be necessary or appropriate in order to carry out the official business of the credit union; and
- (2) it is in accordance with written board policies and procedures.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400820

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 837-9236



## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

##### SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

###### 10 TAC §5.430

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter D, §5.430, concerning Allowable Subrecipient Administrative and Program Services Costs. The purpose of the amendments is to clarify allowable uses of Comprehensive Energy Assistance Program funds and to ensure consistency with Contract requirements.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be greater and more efficient use of funds and greater flexibility for Subrecipients within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by email to [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us); or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. MARCH 27, 2014.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

The proposed amendments affect no other code, article, or statute.

*§5.430. Allowable Subrecipient Administrative and Program Services Costs.*

(a) Funds available for Subrecipient administrative activities will be calculated by the Department as a percentage of Direct Services expenditures. Administrative costs shall not exceed the maximum percentage of total Direct Services Expenditures as indicated in the Contract. All other administrative costs, exclusive of administrative costs for Program Services, must be paid with nonfederal funds. Allowable administrative costs for administrative activities includes costs for general administration and coordination of CEAP, including contract costs and all indirect (or overhead) cost, and activities as described in paragraphs (1) - (7) [(+13)] of this subsection:

- (1) salaries;
  - (2) fringe benefits;
  - (3) non-training travel;
  - (4) equipment;
  - (5) supplies;
  - (6) audit (limited to percentage of the contract expenditures, excluding Training/Travel costs as indicated in the Contract); and
  - (7) office space (limited to percentage of the contract expenditures, excluding Training/Travel costs as indicated in the Contract).
- [(1) salaries and benefits of staff performing administrative and coordination functions;]  
[(2) activities related to eligibility determinations;]  
[(3) preparations of program plans, budgets and schedules;]  
[(4) monitoring of program and projects;]  
[(5) fraud and abuse units;]  
[(6) procurement activities;]

[(7) public relations;]

[(8) services related to accounting, litigation, audits, management of property, payroll and personnel;]

[(9) costs of goods and services required for administration of the program such as the costs for supplies, equipment, travel, postage, utilities and rental of office space and maintenance of office space, provided that such costs are not excluded as direct administrative costs providing program services;]

[(10) travel costs incurred for official business and not excluded as a direct administrative cost for providing programs services (as described in Program Services cost in subsection (d) of this section);]

[(11) preparing reports and other documents;]

[(12) management information systems not related to tracking and monitoring of CEAP requirements; and]

[(13) cost of administering Assurance 16 activities.]

[(b) The Department calculates funds available for Subrecipient administrative activities as a percentage of Direct Services expenditures.]

[(e) Any cost in excess of the maximum allowable by the CEAP contract must be paid from non-federal funds.]

(b) [(d)] Program Services costs shall not exceed the maximum percentage of total Direct Services Expenditures as indicated in the Contract. Program Services costs are allowable when associated with providing client direct services. Program services costs may include [providing program information to clients, screening and assessments, salaries and benefits for staff providing program services and the direct administrative costs associated with providing the services, such as the costs for supplies, equipment, travel, postage, utilities, rental of office space and maintenance of office space. Other program services costs may include] outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP, and activities as described in paragraphs (1) - (8) of this subsection.[-]

(1) direct administrative cost associated with providing the client direct service;

(2) salaries and benefits cost for staff providing program services;

(3) supplies;

(4) equipment;

(5) travel;

(6) postage;

(7) utilities; and

(8) rental of office space.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 20, 2014.

TRD-201400779

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 475-3959



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

##### SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

###### 19 TAC §§66.21, 66.30, 66.54, 66.60, 66.75

The State Board of Education (SBOE) proposes amendments to §§66.21, 66.30, 66.54, 66.60, and 66.75, concerning instructional materials. The sections establish provisions relating to the state adoption of instructional materials. The proposed amendments would update and clarify specific processes for the review and adoption of instructional materials.

The proposed amendments to 19 TAC Chapter 66, Subchapter B, would update and clarify the process for the review and adoption of instructional materials, including the review and adoption cycles, state review panel eligibility, samples, public comment on instructional materials, and updates.

The proposed amendments would have no new procedural and reporting implications. The proposed amendments would have no new locally maintained paperwork requirements.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Martinez 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 would be clarification of the review and adoption process for instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

In addition, 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.

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](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337. A request for a public hearing on the proposed amendments 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*.

The amendments are proposed under the Texas Education Code, §7.102(c)(23), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31; and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The amendments implement the Texas Education Code, §7.102(c)(23) and §31.003.

*§66.21. Review and Adoption Cycles.*

(a) The State Board of Education (SBOE) shall adopt a review and adoption cycle for subjects in the foundation curriculum. No more than one-fourth of the subjects in the foundation curriculum may be reviewed each biennium. Estimated expenditures shall be considered when determining placement of subjects in the cycle.

(b) In adopting the cycle, the SBOE:

(1) is not required to review and adopt instructional materials for all grade levels in a single year; and

(2) shall give priority to instructional materials in the following subjects:

(A) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised and for which assessment instruments are required under the Texas Education Code (TEC), Chapter 39, Subchapter B, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n);

(B) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n);

(C) foundation curriculum subjects not described by subparagraph (A) or (B) of this paragraph, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n); and

(D) enrichment curriculum subjects.

(c) The SBOE shall adopt a review and adoption cycle for subjects in the enrichment curriculum. Placement of a subject in the cycle shall be based on the need for up-to-date materials due to changes in essential knowledge and skills, changing information, and/or changing technology. Estimated expenditures and historical or expected legislative appropriations shall also be considered when determining placement of subjects in the cycle.

*§66.30. State Review Panels: Eligibility.*

A person nominated to serve on a state review panel shall disclose in any nomination or application, in a manner prescribed by the commissioner of education, whether during the three years preceding the appointment the person:

(1) was employed by or received funds from any individual or entity affiliated with a publishing company related to the adoption of instructional materials or participated in an adoption under which the state or a state review panel has or will evaluate instructional materials;

(2) owned or controlled any interest valued at more than \$5,000 in a privately owned publishing company or an entity receiving funds from a publishing company related to the adoption of instructional materials or had direct ownership of stock of a publicly traded company; or

(3) was employed by an institution of higher education that has submitted open-source instructional materials or is a publisher of instructional materials.

~~[(a) A person is not eligible to serve on a state review panel if, during the three years immediately preceding the appointment, the person:]~~

~~[(1) was employed by or received funds from any individual or entity in any way affiliated with a publishing company or participating in an adoption under which the state or a state review panel will evaluate instructional materials; or]~~

~~[(2) owned or controlled, directly or indirectly, any interest in a publishing company or an entity receiving funds from a publishing company.]~~

~~[(b) For the purposes of this section, an eligible institution under §66.67 of this title (relating to Adoption of Open-Source Instructional Materials) that has submitted open-source materials for adoption is considered to be an entity participating in an adoption.]~~

*§66.54. Samples.*

(a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and functional for review purposes.

(b) The publisher of instructional materials submitted for adoption shall make available an electronic copy in an open file format or closed format of each submitted student and teacher component to each State Board of Education (SBOE) member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA).

(c) One electronic sample copy in an open file format or closed format of the student and teacher components of each instructional materials submission shall be filed with each of the 20 regional education service centers (ESCs) on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed. These samples shall be available for public review. Publishers of Internet-based instructional content submitted for review shall provide the ESCs with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period. Samples to ESCs are not required for instructional materials submitted for midcycle review, as specified in §66.22(f) of this title (relating to Midcycle Review and Adoption).

(d) If it is determined that good cause exists, the commissioner of education may extend the deadline for filing samples with ESCs. At its discretion, the SBOE may remove from consideration any materials proposed for adoption that were not properly deposited with the ESCs, the TEA, or members of the state review panel.

(e) One electronic sample copy in an open file format or closed format of each student and teacher component of an instructional materials submission shall be filed with the TEA on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed. In addition, the publisher shall provide a complete description of all items included in a student and teacher component of an instructional materials submission.

(f) On request of a school district, a publisher shall provide an electronic sample of submitted instructional materials and, at the publisher's discretion or upon request, may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of submitted prekindergarten instructional materials. Samples of submitted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

(g) One sample copy of each student and teacher component of an instructional materials submission shall be filed with each member of the appropriate state review panel in accordance with instructions

provided by the TEA. Publishers have the option to file with the state review panels print samples, electronic samples in an open file format or closed format, or galley proofs. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials or descriptions of ancillary materials to state review panel members. Texas Education Code, §31.002, defines instructional materials as content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional material.

(h) The TEA, ESCs, and affected publishing companies shall work together to ensure that hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission is available in each ESC. Affected publishers may be required to loan such hardware or special equipment to any member of a state review panel who does not have access to the necessary hardware or special equipment.

(i) A publisher shall provide a list of all corrections necessary to comply with applicable laws, rules, or the proclamation to each student and teacher component of an instructional materials submission. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule of adoption procedures. If no corrections are necessary, the publisher shall file a letter stating this on or before the deadline in the schedule for submitting the list of corrections. On or before the deadline for submitting lists of corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation.

(j) One complete electronic sample copy in an open file format or closed format of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner of education on or before the date specified in the schedule of adoption procedures. The complete sample copies filed with the TEA must be representative of the final program. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made.

(k) On request of a school district, a publisher shall provide an electronic sample of adopted instructional materials and, at the publisher's discretion or upon request, may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of adopted prekindergarten instructional materials. Samples of adopted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

(l) Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of sample instructional materials.

§66.60. *Public Comment on Instructional Materials.*

(a) Written comments.

(1) Any resident of Texas may submit written comments for, against, or about any instructional materials submitted for adoption.

(2) Written comments and lists of factual errors shall be submitted to the commissioner of education on or before the deadlines specified in the schedule of adoption procedures.

(3) Copies of written comments and lists of factual errors shall be posted on the Texas Education Agency (TEA) website in summary form and provided to the State Board of Education (SBOE), participating publishers, regional education service centers (ESCs), and persons who have filed written requests.

(b) Public hearing before the SBOE. On a date specified in the schedule of adoption procedures, the SBOE shall hold a hearing on instructional materials submitted for adoption that may, at the discretion of the SBOE chair, be designated an official meeting of the SBOE.

(1) Testimony at the hearing shall be accepted from Texas residents and non-residents with priority given to Texas residents. Copies of written testimony made at the hearing shall [may] be distributed to SBOE members. No other written material may be distributed during the hearings. Persons who wish to testify must notify the commissioner of education on or before the date specified in the schedule of adoption procedures. The notice must identify the subject areas and titles about which testimony will be presented. The SBOE may limit the time available for each person to testify in an effort to hear from everyone who has registered to testify. Persons will also be allowed to register to testify at the hearing, but priority will be given to those persons who registered prior to the deadline, in accordance with SBOE Operating Rules, §2.12 (relating to Public Hearings).

(2) Oral responses to testimony at the hearing may be made by official representatives of publishing companies who have requested time to present responses on or before the date specified in the schedule of adoption procedures.

(3) The commissioner of education shall have a complete record of the hearing. The recorded hearing or transcript of the hearing shall be provided on the TEA website and to the SBOE, ESCs, participating publishers, and persons who have filed written requests. The official record shall be held open for ten business days after the close of the hearings. During this period, any person who participated in a hearing before the SBOE and any official representative of a publishing company may submit a written response to written comments and/or oral testimony presented at the hearing.

(4) Within ten business days after the record is closed, the commissioner shall send copies of responses to written and/or oral testimony to members of the SBOE, ESCs, participating publishers, and persons who have filed written requests.

(c) Public comment on instructional materials not adopted on schedule. Public comment on instructional materials not adopted by the SBOE on the date specified in the schedule of adoption procedures shall be accepted according to the SBOE Operating Rules, §2.10 (relating to Oral Public Testimony in Connection with Regular Board and Committee Meetings [Public Testimony]).

§66.75. *Updates.*

(a) A publisher may submit a request to the commissioner of education for approval to substitute an updated edition of state-adopted instructional materials. A publisher requesting an update shall provide the request in writing, along with two mock-ups or screen capture copies of the updated edition, and one copy of the corresponding state-adopted instructional material. This section includes electronic instructional materials and Internet products for which all users receive the same updates.

(b) Requests for approval of the updated edition shall provide that there will be no additional cost to the state.

~~{(c) Requests for approval of the updates shall not be approved during the first year of the original contract unless the commissioner of education determines that changes in technology, curriculum, or other reasons warrant the updates.}~~



(c) [(d)] Publishers submitting requests for approval of the updates must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.

(d) [(e)] Responses from the commissioner of education to update requests shall be provided within 30 days after receipt of the request. If no action has been taken by the end of the 30 days, the updates shall be deemed approved.

(e) [(f)] All requests for updates involving content in state-adopted instructional materials must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. The SBOE may assess penalties as allowed by law against publishers who fail to obtain approval for updates to content in state-adopted instructional materials prior to delivery of the materials to school districts. Publishers may, at any time, make changes that do not affect Texas essential knowledge and skills coverage.

(f) [(g)] Publishers must agree to supply the previous version of state-adopted instructional materials to school districts that choose to continue using the previous version during the duration of the original contract. This subsection does not apply to online instructional materials.

(g) [(h)] A publisher of instructional materials may provide alternative formats for use by school districts if:

- (1) the content is identical to SBOE-approved content;
- (2) the alternative formats include the identical revisions and updates as the original product; and
- (3) the cost to the state and school is equal to or less than the cost of the original product.

(h) [(i)] Alternative formats may be developed and introduced at a time when the subject or grade level is not scheduled in the cycle to be considered for at least two years, in conformance with the procedures for adoption of other state-adopted materials.

(i) [(j)] Publishers must notify the commissioner of education in writing if they are providing SBOE-approved products in alternative formats.

(j) [(k)] Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of these orders.

(k) [(l)] The commissioner of education may add alternative formats of SBOE-approved products to the list of available products disseminated to school districts.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 74. CURRICULUM REQUIREMENTS

## SUBCHAPTER A. REQUIRED CURRICULUM

### 19 TAC §§74.1, 74.3, 74.5

The State Board of Education (SBOE) proposes amendments to §74.1 and §74.3 and new §74.5, concerning curriculum requirements. Section 74.1 addresses the requirement that school districts must offer instruction in the essential knowledge and skills of the appropriate grade levels in the foundation and enrichment curriculum. Section 74.3 establishes the description of a required secondary curriculum. The proposed amendments would align rules for the required secondary curriculum, including courses school districts must offer, with requirements of House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013. The proposed new section would relocate and clarify requirements relating to the academic achievement record and high school diploma.

The 83rd Texas Legislature, Regular Session, 2013, passed HB 5, amending the TEC, §28.025, to change the high school graduation programs from the current minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students.

The proposed revisions to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum would align rules for the required secondary curriculum, including courses school districts must offer, with the requirements of HB 5. The proposed revisions would also move the requirements related to the academic achievement record from 19 TAC Chapter 74, Subchapter B, to 19 TAC Chapter 74, Subchapter A.

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

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendments and new section are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed amendments and new section.

Ms. Martinez has determined that for each year of the first five years the proposed amendments and new section are in effect the public benefit anticipated as a result of enforcing the amendments and new section would include added flexibility in course options for students to meet high school graduation requirements. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new section.

In addition, 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.

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](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337. A request for a public hearing on the proposed amendments and new section 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*.

The amendments and new section are proposed under the Texas Education Code (TEC), §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; TEC, §28.002, as amended by House Bill 5 and House Bill 2662, 83rd Texas Legislature, Regular Session, 2013, which authorizes the SBOE to adopt rules relating to the required curriculum; and TEC, §28.025, as amended by House Bill 5, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under TEC, §28.002.

The amendments and new section implement the Texas Education Code, §§7.102(c)(4); 28.002, as amended by House Bill 5 and House Bill 2662, 83rd Texas Legislature, Regular Session, 2013; and 28.025, as amended by House Bill 5.

§74.1. *Essential Knowledge and Skills.*

(a) A school district that offers kindergarten through Grade 12 must offer the following as a required curriculum:

(1) a foundation curriculum that includes:

- (A) English language arts;
- (B) mathematics;
- (C) science; and
- (D) social studies, consisting of Texas, United States and world history, government, geography, and economics, with emphasis on the free enterprise system and its benefits; and

(2) an enrichment curriculum that includes:

- (A) to the extent possible, languages other than English;
- (B) health, with emphasis on the importance of proper nutrition and exercise;
- (C) physical education;
- (D) fine arts;
- (E) career and technical education;
- (F) technology applications; ~~and~~
- (G) religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature; and [-]
- (H) personal financial literacy.

(b) A school district must provide instruction in the essential knowledge and skills of the appropriate grade levels in the foundation and enrichment curriculum as specified in paragraphs (1) - (13) of this subsection. A school district may add elements at its discretion but must not delete or omit instruction in the foundation and enrichment curriculum specified in subsection (a) of this section.

(1) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);

(2) Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics);

(3) Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science);

(4) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies);

(5) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English);

(6) Chapter 115 of this title (relating to Texas Essential Knowledge and Skills for Health Education);

(7) Chapter 116 of this title (relating to Texas Essential Knowledge and Skills for Physical Education);

(8) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts);

(9) Chapter 118 of this title (relating to Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits);

(10) Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(11) Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development);

(12) Chapter 128 of this title (relating to Texas Essential Knowledge and Skills for Spanish Language Arts and English as a Second Language); and

(13) Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education).

§74.3. *Description of a Required Secondary Curriculum.*

(a) Middle Grades 6-8.

(1) A school district that offers Grades 6-8 must provide instruction in the required curriculum as specified in §74.1 of this title (relating to Essential Knowledge and Skills). The district must ensure that sufficient time is provided for teachers to teach and for students to learn English language arts, mathematics, science, social studies, fine arts, health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must ensure that, beginning with students who enter Grade 6 in the 2010-2011 school year, each student completes one Texas essential knowledge and skills-based fine arts course in Grade 6, Grade 7, or Grade 8.

(b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the required curriculum as specified in §74.1 of this title. The district must ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A) English language arts--English I, II, III, and IV and at least one additional advanced English course;

(B) mathematics--Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications;

(C) science--Integrated Physics and Chemistry, Biology, Chemistry, Physics, and at least two additional science courses selected from Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, Advanced Animal Science, Advanced

Biotechnology, Advanced Plant and Soil Science, Anatomy and Physiology, Engineering Design and Problem Solving, Food Science, Forensic Science, Medical Microbiology, Pathophysiology, [and] Scientific Research and Design, and Principles of Engineering. The requirement to offer two additional courses may be reduced to one by the commissioner of education upon application of a school district with a total high school enrollment of less than 500 students. Science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry;

(D) social studies--United States History Studies Since 1877, World History Studies, United States Government, World Geography Studies, and Economics with Emphasis on the Free Enterprise System and Its Benefits;

(E) physical education--at least two courses selected from Foundations of Personal Fitness, Adventure/Outdoor Education, Aerobic Activities, or Team or Individual Sports;

(F) fine arts--courses selected from at least two of the four fine arts areas (art, music, theatre, and dance)--Art I, II, III, IV; Music I, II, III, IV; Theatre I, II, III, IV; or Dance I, II, III, IV;

(G) career and technical education--coherent sequences of courses selected from at least three of the following sixteen career clusters:

- (i) Agriculture, Food, and Natural Resources;
- (ii) Architecture and Construction;
- (iii) Arts, Audio/Video Technology, and Communications;
- (iv) Business Management and Administration;
- (v) Education and Training;
- (vi) Finance;
- (vii) Government and Public Administration;
- (viii) Health Science;
- (ix) Hospitality and Tourism;
- (x) Human Services;
- (xi) Information Technology;
- (xii) Law, Public Safety, Corrections, and Security;
- (xiii) Manufacturing;
- (xiv) Marketing;
- (xv) Science, Technology, Engineering, and Mathematics; and
- (xvi) Transportation, Distribution, and Logistics;

(H) languages other than English--Levels I, II, and III or higher of the same language;

(I) technology applications--Computer Science I, Computer Science II, and at least two [four] courses selected from [Computer Science I, Computer Science II,] Computer Science III, Digital Art and Animation, Digital Communications in the 21st Century, Digital Design and Media Production, Digital Forensics, Digital Video and Audio Design, Discrete Mathematics for Computer Science, Fundamentals of Computer Science, Game Programming and Design, Independent Study in Evolving/Emerging Technologies, Independent Study in Technology Applications, Mobile Application Development, Robotics Programming and Design, 3-D Modeling

and Animation, Web Communications, Web Design, and Web Game Development; and

(J) speech--Communication Applications.

(3) Districts may offer additional courses from the complete list of courses approved by the State Board of Education to satisfy graduation requirements as referenced in this chapter.

(4) The school district must provide each student the opportunity to participate in all courses listed in subsection (b)(2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b)(2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. A school district must teach a course that is specifically required for high school graduation at least once in any two consecutive school years. For a subject that has an end-of-course assessment, the district must either teach the course every year or employ options described in Subchapter C of this chapter (relating to Other Provisions) to enable students to earn credit for the course and must maintain evidence that it is employing those options.

(5) For students entering Grade 9 beginning with the 2007-2008 school year, districts must ensure that one or more courses offered in the required curriculum for the recommended and advanced high school programs include a research writing component.

(c) Courses in the foundation and enrichment curriculum in Grades 6-12 must be provided in a manner that allows all grade promotion and high school graduation requirements to be met in a timely manner. Nothing in this chapter shall be construed to require a district to offer a specific course in the foundation and enrichment curriculum except as required by this subsection.

§74.5. Academic Achievement Record (Transcript) and High School Diploma.

(a) The commissioner of education shall develop and distribute to each school district and institution of higher education in the state guidelines for a common academic achievement record and coding system for courses and instructions for recording information on the academic achievement record. Each school district must use the coding system provided by the commissioner.

(b) Following guidelines developed by the commissioner, each school district must use an academic achievement record (transcript) form that includes the following:

- (1) student demographics;
- (2) school data;
- (3) student data; and
- (4) the record of courses and credits earned.

(c) The academic achievement record shall serve as the academic record for each student and must be maintained permanently by the district. Each district must ensure that copies of the record are made available for a student transferring from one district to another. To ensure appropriate placement of a transfer student, a district must respond promptly to each request for student records from a receiving school district.

(d) Any credit earned by a student must be recorded on the academic achievement record, regardless of when the credit was earned.

(e) A student who completes high school graduation requirements shall have attached to the academic achievement record a seal approved by the SBOE.

(f) A student who completes the requirements for an endorsement shall have the endorsement clearly indicated on the academic achievement record and on the diploma.

(g) A student who earns a performance acknowledgment shall have the performance acknowledgment clearly indicated on the academic achievement record and on the diploma.

(h) A student who earns the distinguished level of achievement shall have the distinguished level of achievement clearly indicated on the academic achievement record and on the diploma.

(i) A student who completes all graduation requirements except for required end-of-course assessment instruments may be issued a certificate of coursework completion. The academic achievement record will include a notation of the date such a certificate was issued to the student.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## SUBCHAPTER C. OTHER PROVISIONS

### 19 TAC §74.38

The State Board of Education (SBOE) proposes new §74.38, concerning curriculum requirements. The proposed new section would add a new rule for instruction in cardiopulmonary resuscitation (CPR), as required by House Bill (HB) 897, 83rd Texas Legislature, Regular Session, 2013.

Current law requires the SBOE to include elements relating to instruction in CPR and the use of an automated external defibrillator (AED) as part of the Texas essential knowledge and skills (TEKS) for health. The TEKS for Health Education, Grades 7-8, include the expectation that students demonstrate basic first-aid procedures, including CPR.

In 2013, the 83rd Texas Legislature, passed HB 897, amending the Texas Education Code, §28.0023, to require that the SBOE include instruction in CPR for students in Grades 7-12. The legislation also requires school districts and open-enrollment charter schools to provide instruction in CPR and for students to receive the CPR instruction at least once before graduation. The legislation specifies that the instruction may be provided as part of any course and is not required to result in certification in CPR.

Proposed new 19 TAC §74.38 would address requirements for instruction in CPR, as required by HB 897.

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

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed new section is in effect there will be no additional

costs for state or local government as a result of enforcing or administering the proposed new section.

Ms. Martinez has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the new section would be access for students to additional instruction regarding CPR. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

In addition, 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.

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](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337. A request for a public hearing on the proposed new section 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*.

The new section is proposed under the Texas Education Code, §28.0023, as amended by House Bill 897, 83rd Texas Legislature, Regular Session, 2013, which authorizes the State Board of Education to adopt rules to require instruction in CPR for students in Grades 7-12.

The new section implements the Texas Education Code, §28.0023, as amended by House Bill 897, 83rd Texas Legislature, Regular Session, 2013.

§74.38. Requirements for Instruction in Cardiopulmonary Resuscitation (CPR).

(a) A school district or an open-enrollment charter school shall provide instruction to students in Grades 7-12 in cardiopulmonary resuscitation (CPR). The instruction:

(1) may be provided as a part of any course; and

(2) must be provided to each student at least once before graduation from high school.

(b) CPR instruction must include training that has been developed:

(1) by the American Heart Association or the American Red Cross; or

(2) using nationally recognized, evidence-based guidelines for emergency cardiovascular care and incorporating psychomotor skills to support the instruction.

(c) A school district or an open-enrollment charter school may use emergency medical technicians, paramedics, police officers, firefighters, representatives of the American Heart Association or the American Red Cross, teachers, other school employees, or other similarly qualified individuals to provide CPR instruction and training under this section. Except as specified in subsection (d) of this section, an instructor of this training is not required to be certified in CPR.

(d) Instruction provided under this section is not required to result in certification by a student in CPR. If instruction is intended to result in certification in CPR, the course instructor must be authorized to provide the instruction by the American Heart Association, the American Red Cross, or a similar nationally recognized association.

(e) A school district or an open-enrollment charter school may waive the requirement under this section for a student, who due to a disability, is unable to complete the requirement. The determination regarding a student's ability to complete the CPR requirement will be made by:

(1) the student's ARD committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A; or

(2) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973.

(f) This section applies to any student who entered Grade 7 in the 2010-2011 school year and thereafter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

### SUBCHAPTER D. UNIFORM BANK BID OR REQUEST FOR PROPOSAL AND DEPOSITORY CONTRACT

#### 19 TAC §109.51, §109.52

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §109.51 and §109.52 are not included in the print version of the Texas Register. The figures are available in the on-line version of the March 7, 2014, issue of the Texas Register.)*

The State Board of Education (SBOE) proposes amendments to §109.51 and §109.52, concerning uniform forms for depository bank bid or request for proposal, depository contract, depository bank contract, and surety bonds. Section 109.51 establishes the requirement that each school district submit a blank uniform bid form or request for proposal form to each bank located in the district and, if desired, to other banks interested in acting as depository for all funds. The section includes the bid and request for proposal forms prescribed by the SBOE. Section 109.52 establishes the requirement that each school district select a bank as a school depository and enter into a depository contract with the bank. A school district may select and contract with more than one bank. The section includes the depository contract and surety bond forms with the content prescribed by the SBOE. The proposed amendments would reduce paperwork and streamline the process by which a school district selects a depository bank.

The rules in 19 TAC Chapter 109, Subchapter D, establish rules related to a school district's selection of and contract with a bank to serve as the district's depository for all funds.

Section 109.51 establishes the requirement that each school district, before the current depository contract expires, choose whether to select a depository bank through competitive bidding or through requests for proposals and then submit a blank uniform bid or proposal form to each bank in the district and, if desired, to other interested banks. Section 109.51 also establishes the requirement that a district file the selected form with the Texas Education Agency (TEA). The section includes the bid and proposal forms prescribed by the SBOE.

Section 109.52 establishes the requirement that each school district select at least one bank as a depository and enter into a depository contract with the bank, providing the completed contract to the TEA. Section 109.52 also establishes the requirement that a district provide a completed surety bond form to the TEA if the depository bank uses a surety bond to secure district deposits. The section includes the depository contract form and surety bond form with the content prescribed by the SBOE.

The proposed amendment to 19 TAC §109.51, Uniform Depository Bank Bid or Proposal Form, would remove the requirement in subsection (b) for the district to file its bid or proposal with the TEA and would add a requirement for the district to make the selected bid or proposal available to the TEA on request. The uniform bid blank form, adopted as Figure: 19 TAC §109.51(c), and the uniform proposal blank form, adopted as Figure: 19 TAC §109.51(d), would be revised to update and clarify language.

The proposed amendment to 19 TAC §109.52, Uniform Depository Bank Contract and Surety Bond Forms, would clarify language and add a provision in subsection (a) to require a district to electronically file the contract with the TEA. The proposed amendment would also add a provision for the TEA to notify a district by email if its depository contract is incomplete and a provision stating that a district that has no depository contract in force and filed with the TEA will receive its warrants from the TEA by US mail.

The uniform depository bank contract form, adopted as Figure: 19 TAC §109.52(b), would be revised to remove the signature line for a TEA staff member to approve the contract because the TEA's approval is not considered necessary; to delete any requirement for the bid or proposal to be attached to the contract and to add a provision that the district must provide the bid or proposal upon the TEA's request; to remove language stating that the contract becomes binding only upon acceptance by the TEA; and to add a requirement for the district to file the contract or extension electronically with the TEA. The surety bond form, adopted as Figure: 19 TAC §109.52(d), would be revised to update and clarify language.

The proposed amendments would have procedural and reporting implications. The proposed amendments would update and streamline the filing process and reduce paperwork for a district to select and contract with a depository bank. The proposed amendment would have locally maintained paperwork requirements. The proposed amendments would require the district to keep the selected bid or proposal in the district and make it available to the TEA upon request.

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposed amendments are in effect there will be no additional costs for state government as a

result of enforcing or administering the proposed amendments. Districts may save money because the proposed amendment to 19 TAC §109.51 would remove the requirement for districts to mail their selected bid or proposal form to the TEA. These savings are impossible to estimate because the size or page count of documents could vary and require differing amounts of staff processing time as well as packing and shipping costs.

Dr. Dawn-Fisher 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 would be to update and streamline the process and reduce paperwork for a district to select and contract with a depository bank. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

In addition, 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.

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](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337. A request for a public hearing on the proposed amendments 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*.

The amendments are proposed under the Texas Education Code (TEC), §§7.102(c)(34), 45.206, and 45.208, which authorize the State Board of Education to prescribe uniform bid blank and request for proposal forms for a school district to use in selecting a depository bank and to prescribe uniform depository contract and bond forms.

The amendments implement the Texas Education Code, §§7.102(c)(34), 45.206, and 45.208.

*§109.51. Uniform Depository Bank Bid or Proposal Form.*

(a) At least 60 days before the end of the current depository contract, each school district must decide to use either competitive bidding or a request for proposals to choose a new depository.

~~[(a) Each school district shall choose whether to select a depository through a competitive bidding process or through a request for proposal process at least 60 days before the termination of the current depository contract.]~~

(b) At least 30 days before the end of the current depository contract, the district must mail the uniform blank form for the selected process to each bank located in the district. The district must use either the uniform bid form specified in subsection (c) of this section or the uniform proposal form specified in subsection (d) of this section. The district may add other terms to the uniform bid or proposal form if the added terms do not unfairly restrict competition between banks as stated in the Texas Education Code, §45.206(b). The district must keep the selected bid or proposal form in the district and make it available to the Texas Education Agency upon request.

~~[(b) Each school district is to use a uniform bid or proposal blank form as specified in Texas Education Code, §45.206. A school district may add other terms to the uniform bid or proposal blank form based on additional requirements. The selected form must be mailed to each bank located in the school district at least 30 days before the~~

~~termination of the current depository contract. The selected form must be filed with the Texas Education Agency in accordance with filing instructions specified in the form.]~~

(c) This subsection provides the [The] uniform bid blank form, [is provided in this subsection] entitled "Bid Form for Depository Services."

Figure: 19 TAC §109.51(c)  
~~[Figure: 19 TAC §109.51(e)]~~

(d) This subsection provides the [The] uniform proposal blank form, [is provided in this subsection] entitled "Proposal Form for Depository Services."

Figure: 19 TAC §109.51(d)  
~~[Figure: 19 TAC §109.51(d)]~~

*§109.52. Uniform Depository Bank Contract and Surety Bond Forms.*

(a) Each school district must use the uniform depository contract form as provided in subsection (b) of this section. The district must complete the form and file it electronically with the Texas Education Agency (TEA) as specified in the Texas Education Code (TEC), §45.208, and in accordance with filing instructions provided on the TEA website.

~~[(a) Each school district is to use a depository contract form as specified in Texas Education Code (TEC), §45.208. The depository contract form must be completed and filed with the Texas Education Agency (TEA) as specified in TEC, §45.208, and in accordance with filing instructions specified in the form.]~~

(b) This subsection provides the [The] uniform depository contract form, [is provided in this subsection] entitled "Depository Contract for Funds of Independent School Districts under the [Under] Texas Education Code, Chapter 45, Subchapter G, School District Depositories."

Figure: 19 TAC §109.52(b)  
~~[Figure: 19 TAC §109.52(b)]~~

(c) If [In the event that] a [school] district's depository elects a surety bond to secure the district's [school district] deposit amounts less any applicable Federal Deposit Insurance Corporation insurance, the depository must complete the [a] surety bond form provided in subsection (d) of this section, attach it to the contract, [must be completed] and file it [filed] with the district. The district must file a copy of the contract and the surety bond form with the TEA as specified in the TEC, §45.208, and in accordance with filing instructions provided on the TEA website.

(d) This subsection provides the [The] uniform surety bond form, [is provided in this subsection] entitled "Texas School Depository Surety Bond Form."

Figure: 19 TAC §109.52(d)  
~~[Figure: 19 TAC §109.52(d)]~~

(e) If the TEA receives a contract form and determines that it is incomplete, the TEA will notify the district.

(f) A district that has no current depository contract in force and filed with the TEA will receive its warrants from the TEA by US mail.

(g) [(e)] For depository contract filing requirements for charter schools, refer to §100.1043 of this title (relating to Status and Use of State Funds; Depository Contract).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 114. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR LANGUAGES OTHER THAN ENGLISH

The State Board of Education (SBOE) proposes new §§114.3, 114.4, 114.13, 114.14, 114.31-114.46, and 114.61-114.73, concerning Texas essential knowledge and skills (TEKS) for languages other than English (LOTE). The proposed new sections would establish revised TEKS for LOTE courses in elementary, middle school, and high school with an implementation date of the 2016-2017 school year, except for the Special Topics in Language and Culture course, which would be implemented during the 2014-2015 school year.

Applications for appointment to LOTE TEKS review committees were accepted by the Texas Education Agency (TEA) from December 2012 to January 2013. Applications received were provided to SBOE members at their January 2013 meeting so that board members could complete their nominations. Nominations for LOTE TEKS review committee members and appointments of expert reviewers were made in May 2013.

The LOTE TEKS review committees convened in Austin in June 2013 to begin work on draft recommendations for revisions to the TEKS. Expert reviewers provided their initial feedback on the current LOTE TEKS to the SBOE in August. The TEKS review committees met again in August 2013 to complete their initial draft recommendations.

In September 2013, the first draft recommendations were provided to the board and to the board-appointed expert reviewers and posted to the TEA website for informal public feedback. During the September 2013 SBOE meeting, two expert reviewers and one representative from each LOTE TEKS review committee provided invited testimony to the SBOE Committee of the Full Board. Expert reviewers provided feedback on the committee's draft recommendations in October.

The LOTE TEKS review committees met for a third time in October 2013 in order to finalize their recommendations for revisions to the TEKS. The SBOE-appointed expert reviewers participated in this meeting and their feedback on the draft recommendations was provided to the TEKS review committee members at this meeting. The final recommendations from the review committees were posted on the TEA website in November 2013 and were shared with the expert reviewers. The experts' final feedback was provided to the SBOE at the January 2014 SBOE meeting.

A new course, Special Topics in Language and Culture, was developed to address requirements in HB 5, 83rd Texas Legislature, Regular Session, 2013, that allow students who have completed one credit in a language other than English but who are unlikely to successfully complete a second credit in that lan-

guage to substitute credit in another course. In order for the new course to be available for the implementation of the new foundation high school program graduation requirements in the 2014-2015 school year, the TEKS for the Special Topics in Language and Culture course will require an earlier implementation date than the other LOTE TEKS.

Proposed revisions to 19 TAC Chapter 114, Subchapters A-D, were presented to the SBOE for first reading and filing authorization at the January 2014 meeting. The SBOE took action to approve the proposed revisions as amended by the SBOE Committee of the Full Board.

The proposed new sections would have no procedural and reporting implications. The proposed new sections would have no locally maintained paperwork requirements.

Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed new sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed new sections.

There are fiscal implications for the TEA in fiscal years 2013 and 2014 for reviewing and revising the LOTE TEKS, including reimbursement to committee members for travel at an estimated cost of \$46,020 for fiscal year 2013 and \$33,360 for fiscal year 2014. There are also implications for the state if the TEA develops professional development to help teachers and administrators understand the revisions to the TEKS. Any professional development that is created would be based on whether the TEA receives an appropriation for professional development in the next biennium.

There are anticipated fiscal implications for school districts and charter schools as they comply with implementation of the new TEKS. The fiscal implications may occur in the form of professional development needs and the need to revise and update district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

Ms. Martinez has determined that for each year of the first five years the proposed new sections are in effect the public benefit anticipated as a result of enforcing the new sections would include better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

In addition, 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.

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](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337. The State Board of Education will hold a public hearing in conjunction with the regularly scheduled April 2014 State Board of Education meeting. Information about the public hearing will be posted at <http://www.tea.state.tx.us/index4.aspx?id=3785> once available.

### SUBCHAPTER A. ELEMENTARY

#### 19 TAC §114.3, §114.4

The new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials.

The new sections implement the Texas Education Code, §7.102(c)(4) and §28.002.

§114.3. Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, Elementary, Adopted 2014.

(a) The provisions of this section and §114.4 of this title (relating to Languages Other Than English, Elementary, Adopted 2014) shall be implemented by school districts.

(b) No later than August 31, 2015, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for languages other than English as adopted in §114.4 of this title.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §114.4 of this title shall be implemented beginning with the 2016-2017 school year and apply to the 2016-2017 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §114.4 of this title shall be implemented for the following school year.

(e) Section 114.1 of this title (relating to Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, Elementary) and §114.2 of this title (relating to Languages Other Than English, Elementary) shall be superseded by the implementation of this section and §114.4 of this title.

§114.4. Languages Other Than English, Elementary, Adopted 2014.

(a) According to the National Standards for Foreign Language Learning, advanced level language proficiency is necessary for college and career readiness. To that end, students should have uninterrupted, consistent access to early standards-based learning experiences in languages other than English. School districts are strongly encouraged to offer languages other than English in the elementary grades in immersion or Foreign Language in Elementary Schools (FLES) settings with consistent and frequent exposure. For districts that offer languages in elementary school, the expected student outcomes are the same as those designated at levels I-IV in Subchapter C of this chapter (relating to Texas Essential Knowledge and Skills for Languages Other Than English).

(b) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. MIDDLE SCHOOL

**19 TAC §114.13, §114.14**

The new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials.

The new sections implement the Texas Education Code, §7.102(c)(4) and §28.002.

§114.13. Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, Middle School, Adopted 2014.

(a) The provisions of this section and §114.14 of this title (relating to Languages Other Than English, Middle School, Adopted 2014) shall be implemented by school districts.

(b) No later than August 31, 2015, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for languages other than English as adopted in §114.14 of this title.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §114.14 of this title shall be implemented beginning with the 2016-2017 school year and apply to the 2016-2017 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §114.14 of this title shall be implemented for the following school year.

(e) Section 114.11 of this title (relating to Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, Middle School) and §114.12 of this title (relating to Languages Other Than English, Middle School) shall be superseded by the implementation of this section and §114.14 of this title.

§114.14. Languages Other Than English, Middle School, Adopted 2014.

(a) According to the National Standards for Foreign Language Learning, advanced level language proficiency is necessary for college and career readiness. To that end, students should have uninterrupted, consistent access to early standards-based learning experiences in languages other than English. School districts are strongly encouraged to



offer languages other than English in middle school. For districts that offer languages in middle school, the essential knowledge and skills are those designated as levels I-IV in Subchapter C of this chapter (relating to Texas Essential Knowledge and Skills for Languages Other Than English).

(b) Students may be awarded one unit of high school credit per level for successful completion of the level or demonstration of equivalent proficiency and one-half to one unit of high school credit for successful completion of a non-sequential course.

(c) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§114.31 - 114.46

The new sections are proposed under the Texas Education Code (TEC), §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, as amended by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under TEC, §28.002.

The new sections implement the Texas Education Code, §§7.102(c)(4); 28.002; and 28.025, as amended by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

*§114.31. Implementation of Texas Essential Knowledge and Skills for Languages Other Than English, High School, Adopted 2014.*

(a) The provisions of this section and §§114.32-114.46 of this title shall be implemented by school districts.

(b) The provisions of §114.33 of this title (relating to Special Topics in Language and Culture (One Credit), Adopted 2014) shall be implemented beginning with the 2014-2015 school year.

(c) No later than August 31, 2015, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for languages other than English as adopted in §§114.32 and 114.34-114.46 of this title.

(d) If the commissioner makes the determination that instructional materials funding has been made available under subsection (c) of this section, §§114.32 and 114.34-114.46 of this title shall be implemented beginning with the 2016-2017 school year and apply to the 2016-2017 and subsequent school years.

(e) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (c) of this section, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§114.32 and 114.34-114.46 of this title shall be implemented for the following school year.

(f) Sections 114.21-114.29 of this title shall be superseded by the implementation of this section and §§114.32-114.46 of this title.

*§114.32. Discovering Languages and Cultures (One-Half to One Credit), Adopted 2014.*

(a) General requirements.

(1) Discovering Languages and Cultures is a non-sequential elective course that can be offered in elementary, middle, or high school. At the high school level, students shall be awarded one-half to one elective credit for successful completion of this course.

(2) Using age-appropriate activities, students explore a variety of aspects of one or more languages and cultures and/or develop basic language learning and communicative skills.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate

interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) Discovery courses in LOTE allow the student to explore other languages and cultures. The student demonstrates an understanding of the elements of language(s), demonstrates an understanding of cultures, and develops effective language study skills. ACTFL has established guidelines for proficiency levels that are used as a basis for the Texas essential knowledge and skills for LOTE. ACTFL has identified national standards in the Standards for Foreign Language Learning in the 21st Century (the five C's of foreign language education). These standards describe the "what" (content) of world languages learning and form the core standards-based instruction in the world languages classroom.

(5) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student demonstrates an understanding of the elements of language(s). The student is expected to:

(A) engage in different types of language learning activities;

(B) compare and contrast aspects of other languages to English and the student's native language; and

(C) apply basic communication skills in the target language(s), including listening, speaking, reading, and writing.

(2) The student demonstrates an understanding of cultures. The student is expected to:

(A) identify and describe cultural practices in selected regions or countries;

(B) recognize the cultural products such as art, music, food, clothing, or other culturally related examples in selected regions or countries; and

(C) compare and contrast aspects of other cultures to the student's own culture.

(3) The student develops effective language study skills. The student is expected to:

(A) engage in a variety of language learning strategies such as identifying cognates and recognizing word origins; and

(B) demonstrate an awareness of language patterns such as word/character order, grammatical structures, and symbols.

§114.33. Special Topics in Language and Culture (One Credit), Adopted 2014.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course cannot be considered a part of the coherent sequence of languages other than English (LOTE) courses required for any endorsement. This course will not count as a level II LOTE course. Students who desire to

continue with LOTE study will need to take level II or higher LOTE courses. This course may be substituted for a level II LOTE course upon approval by:

(1) the student's level I LOTE classroom teacher, the principal or designee, and the student's parent or person standing in parental relation who determine that the student is not likely to be successful in a level II LOTE course;

(2) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A; or

(3) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral, written, or signed communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken, written, or signed communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, or visual materials.

(C) In the presentational mode of communication, students present orally, in writing, or in sign, information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to a signing or presenting orally to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for LOTE. The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) In the Special Topics in Language and Culture course, students demonstrate novice level communication skills acquired in a LOTE level I course, develop a greater understanding of other cultures, make connections to other disciplines, draw comparisons between languages and cultures, and effectively engage in global communities. Students enhance their personal and public lives, and meet the career demands of the 21st century, by gaining insight into other world languages and cultures.

(5) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Communication. The student communicates an understanding of the elements of languages. The student is expected to:

(A) introduce self and others using basic, culturally-appropriate greetings;

(B) ask simple questions and provide simple responses related to personal preferences; and

(C) exchange essential information about self, family, and familiar topics.

(2) Cultures. The student identifies the practices, products, and perspectives of selected cultures. The student is expected to:

(A) identify and describe selected cultural practices and perspectives such as traditions, daily life, and celebrations;

(B) examine significant historic and contemporary influences from the cultures studied such as explorers, artists, musicians, and athletes; and

(C) describe various products across cultures such as food, shelter, clothing, transportation, sports and recreation, music, art, and dance.

(3) Connections. The student describes connections between world languages and other disciplines. The student is expected to:

(A) use authentic materials such as maps, graphs, graphic organizers, and other print and visual materials or literature to reinforce comprehension and expression of basic vocabulary in the target language; and

(B) research and present information on historical and contemporary cultural influences.

(4) Comparisons. The student develops insight into the nature of the target language and culture by comparing the student's own language and culture to another. The student is expected to:

(A) compare and contrast selected cultural practices and perspectives such as traditions, daily life, and celebrations to student's own culture;

(B) give examples of cognates, false cognates, idiomatic expressions, or sentence structure to show understanding of how languages are alike and different; and

(C) demonstrate how media such as television, Internet, newspapers, and advertisements represent selected cultural similarities and differences.

(5) Communities. The student gains an understanding of cultures represented by LOTE to enhance global perspective, personal growth, and enrichment. The student is expected to:

(A) participate in cultural events in local, global, or on-line communities and discuss experiences and perspectives gained;

(B) research careers in which cross-cultural awareness or LOTE language skills are needed; and

(C) describe how cultural awareness impacts personal growth.

§114.34. American Sign Language, Level I (One Credit), Adopted 2014.

(a) General requirements. Level I can be offered in elementary, middle, or high school. At the high school level, students shall be awarded one credit for successful completion of this course. There is no prerequisite required for this course.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage receptively and expressively in conversations, to present information expressively to an audience, and to comprehend cultural and linguistic aspects of the language. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct signed communication with others without voice. Examples of this "two-way" communication include but are not limited to signing face to face or in a group discussion. Interpersonal communication includes receptive and expressive skills.

(B) In interpretive (receptive) mode of communication, students demonstrate understanding of receptively viewed communication within appropriate cultural contexts. Examples of this type of "one-way" receptive comprehension include but are not limited to American Sign Language (ASL) video weblogs (or vlogs), other signed presentations, and signed DVD conversations.

(C) In presentational (expressive) mode of communication, students present information in expressive form without voice to an audience of receptive listeners with whom there is no immediate expressive interaction. Examples of this "one-to-many" mode of communication include but are not limited to an expressively signed presentation to a group or recorded presentation where there is no receptive listener present to respond.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) ASL difficulty has been determined by standards of the Foreign Service Institute and Defense Language Institute as a Level IV out of four (Level IV being the most difficult). The American Sign

Language Teachers Association (ASLTA) states the challenge to ASL is primarily in the modality of learning. This conclusion is based on the complex grammar system and significant structural and cultural differences in the language. Students are generally seated in a semi-circle to facilitate visual communication, notes cannot be taken without looking away from the primary source of information, and instruction occurs in the target language where learning is done spatially and words are not processed sequentially. The linear nature of spoken language cannot be used in ASL and the simultaneous expression of complex units is used. The level of difficulty of ASL should be noted.

(5) While other languages possess a spoken and/or written element, ASL incorporates manual components with no verbal and/or written form. ASL is a fully developed natural language that is used by members of the North American Deaf Community. The language is distinct from gestures seen in spoken languages in that signs used in ASL are controlled by the structures of its linguistic system, independent of English. ASL encompasses all of the features that make a language a unique, rule-governed communication system. ASL includes handshapes, movements, and other grammatical features needed to form signs and sentences, and parts combine to make wholes. It is not a simplified language and contains structures and processes that English does not. The premise of Deaf culture is rooted in the language itself and cannot be separated.

(6) ASL is a signed language where the modes of communication involve different skills than written and/or spoken languages. ASL is not a formal written language; glossing is the term used to describe a chosen written system of symbols devised to transcribe signs and nonmanual signals to an English equivalent. Since ASL information is received visually and not in an auditory manner, communication skills in ASL are defined as follows:

(A) interpretive listening and reading targets are called interpretive receptive;

(B) one-to-one interpersonal targets are called receptive and expressive; and

(C) one-to-many presentational speaking is expressed through signs and the target is presentational expressive.

(7) Using age-appropriate materials, students in ASL Level I develop the ability to perform the tasks of the novice language learner. The novice language learner, when dealing with familiar topics, should understand ASL phrases receptively and respond expressively with learned material; sign learned words, concepts, phrases, and sentences; recognize the importance of communication and how it applies to the American Deaf culture; and recognize the importance of accuracy of expression by knowing the components of ASL. Students use expressive and receptive skills for comprehension.

(8) ASL Level I proficiency levels, as defined by ACTFL and ASLTA, are as follows: interpersonal receptive, novice mid; interpersonal expressive, novice mid; interpretive receptive, novice high; and presentational expressive, novice high.

(9) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills at the prescribed proficiency level and communicate across all modes of communication. According to ASLTA's National K-16 ASL Standards, "heritage language learning is an emerging issue in ASL instruction. The formal instruction of ASL to deaf is a very recent phenomenon, as is the availability of ASL instruction in K-12 settings for hearing children of deaf

parents. Heritage language learning is an important and developing interest in the field of ASL teaching and learning."

(10) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Communication. The student communicates in ASL using expressive and receptive communication skills without voice. The student is expected to:

(A) engage in a variety of ASL exchanges of learned material to socialize and to provide and obtain information;

(B) demonstrate an understanding of basic ASL such as simple stories, everyday commands, and brief instructions when dealing with familiar topics;

(C) convey information in ASL using familiar words, concepts, classifiers, phrases, and sentences to others without voice;

(D) demonstrate appropriate usage of ASL phonology, morphology, syntax, semantics, and pragmatics; and

(E) be exposed to and experience ASL literature such as handshape stories that follows traditional cultural features.

(2) Cultures. The student gains knowledge and understanding of American Deaf culture. The student is expected to:

(A) recognize and use Deaf cultural norms to demonstrate an understanding of the perspectives of American Deaf culture;

(B) show evidence of appreciation of ASL literature created by the Deaf and how it applies to the perspectives of American Deaf culture;

(C) show evidence of appreciation of the contributions by the Deaf and how they are applied to the perspectives of American Deaf culture such as historical, geographical, political, artistic, and scientific avenues; and

(D) demonstrate an understanding of Deaf history and how it applies to the perspectives of American Deaf culture.

(3) Connections. The student uses ASL to make connections with other subject areas and to acquire information. The student is expected to:

(A) use resources and digital technology to gain access to information about ASL and Deaf culture; and

(B) use ASL to obtain, reinforce, or expand knowledge of other subject areas.

(4) Comparisons. The student develops insight into the nature of language and culture by comparing the student's own language and culture to ASL and American Deaf culture. The student is expected to:

(A) demonstrate an understanding of the nature of language through comparisons of the student's own language and ASL;

(B) demonstrate an understanding of the nature of culture through comparisons of the student's own culture and the American Deaf culture; and

(C) demonstrate an understanding of how one language and culture can influence another.

(5) Communities. The student participates in the Deaf/ASL community by using ASL. The student is expected to:

(A) apply ASL at the novice proficiency level in and/or out of the school setting through involvement in cultural activities such as attending Deaf events;

(B) be aware of methods of technology to communicate with the Deaf/ASL community; and

(C) show evidence of becoming a lifelong learner by using ASL at the novice proficiency level for personal enrichment and/or career development.

§114.35. American Sign Language, Level II (One Credit), Adopted 2014.

(a) General requirements. Level II can be offered in elementary, middle, or high school. At the high school level, students shall be awarded one credit for successful completion of this course. American Sign Language (ASL) Level I is a prerequisite for this course.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage receptively and expressively in conversations, to present information expressively to an audience, and to comprehend cultural and linguistic aspects of the language. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct signed communication with others without voice. Examples of this "two-way" communication include but are not limited to signing face to face or in a group discussion. Interpersonal communication includes receptive and expressive skills.

(B) In interpretive (receptive) mode of communication, students demonstrate understanding of receptively viewed communication within appropriate cultural contexts. Examples of this type of "one-way" receptive comprehension include but are not limited to ASL video weblogs (or vlogs), other signed presentations, and signed DVD conversations.

(C) In presentational (expressive) mode of communication, students present information in expressive form without voice to an audience of receptive listeners with whom there is no immediate expressive interaction. Examples of this "one-to-many" mode of communication include but are not limited to an expressively signed presentation to a group or recorded presentation where there is no receptive listener present to respond.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) ASL difficulty has been determined by standards of the Foreign Service Institute and Defense Language Institute as a Level IV out of four (Level IV being the most difficult). The American Sign Language Teachers Association (ASLTA) states the challenge to ASL is primarily in the modality of learning. This conclusion is based on the complex grammar system and significant structural and cultural differences in the language. Students are generally seated in a semi-circle to facilitate visual communication, notes cannot be taken without looking away from the primary source of information, and instruction occurs in the target language where learning is done spatially and words are not processed sequentially. The linear nature of spoken language cannot be used in ASL and the simultaneous expression of complex units is used. The level of difficulty of ASL should be noted.

(5) While other languages possess a spoken and/or written element, ASL incorporates manual components with no verbal and/or written form. ASL is a fully developed natural language that is used by members of the North American Deaf Community. The language is distinct from gestures seen in spoken languages in that signs used in ASL are controlled by the structures of its linguistic system, independent of English. ASL encompasses all of the features that make a language a unique, rule-governed communication system. ASL includes handshapes, movements, and other grammatical features needed to form signs and sentences, and parts combine to make wholes. It is not a simplified language and contains structures and processes that English does not. The premise of Deaf culture is rooted in the language itself and cannot be separated.

(6) ASL is a signed language where the modes of communication involve different skills than written and/or spoken languages. ASL is not a formal written language; glossing is the term used to describe a chosen written system of symbols devised to transcribe signs and nonmanual signals to an English equivalent. Since ASL information is received visually and not in an auditory manner, communication skills in ASL are defined as follows:

(A) interpretive listening and reading targets are called interpretive receptive;

(B) one-to-one interpersonal targets are called receptive and expressive; and

(C) one-to-many presentational speaking is expressed through signs and the target is presentational expressive.

(7) Using age-appropriate materials, students in ASL Level II develop the ability to perform the tasks of the novice-to-intermediate language learner. The novice-to-intermediate language learner, when dealing with familiar topics, should understand ASL phrases receptively and respond expressively with learned material; sign learned words, concepts, phrases, and sentences; recognize the importance of communication and how it applies to the American Deaf culture; and recognize the importance of accuracy of expression by knowing the components of ASL. Students use expressive and receptive skills for comprehension.

(8) ASL Level II proficiency levels, as defined by ACTFL and ASLTA, are as follows: interpersonal receptive, novice mid; interpersonal expressive, intermediate low; interpretive receptive, intermediate low; and presentational expressive, intermediate mid.

(9) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills at the prescribed proficiency level and communicate across all modes of communication. According to ASLTA's National K-16 ASL Standards, "heritage

language learning is an emerging issue in ASL instruction. The formal instruction of ASL to deaf is a very recent phenomenon, as is the availability of ASL instruction in K-12 settings for hearing children of deaf parents. Heritage language learning is an important and developing interest in the field of ASL teaching and learning."

(10) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Communication. The student communicates in ASL using expressive and receptive communication skills without voice. The student is expected to:

(A) engage in a variety of ASL exchanges of learned material to socialize and to provide and obtain information;

(B) demonstrate an understanding of ASL such as stories, everyday commands, and instructions when dealing with familiar topics;

(C) convey information in ASL using concepts, classifiers, phrases, and sentences to others without voice;

(D) demonstrate appropriate usage of ASL phonology, morphology, syntax, semantics, and pragmatics; and

(E) create and express ASL literature, including handshape stories, that follows traditional cultural features.

(2) Cultures. The student gains knowledge and understanding of American Deaf culture. The student is expected to:

(A) recognize and use Deaf cultural norms to demonstrate, in writing or ASL, an understanding of the perspectives of American Deaf culture;

(B) show evidence of appreciation of ASL literature created by the Deaf and how it applies to the perspectives of American Deaf culture;

(C) show evidence of appreciation of the contributions to arts and sciences by the Deaf and how they are applied to the perspectives of American Deaf culture; and

(D) demonstrate an understanding of Deaf history and how it applies to the perspectives of American Deaf culture.

(3) Connections. The student uses ASL to make connections with other subject areas and to acquire information. The student is expected to:

(A) use resources and digital technology to gain access to information about ASL and Deaf culture; and

(B) use ASL to obtain, reinforce, or expand knowledge of other subject areas.

(4) Comparisons. The student develops or expands insight into the nature of language and culture by comparing the student's own language and culture to ASL and American Deaf culture. The student is expected to:

(A) demonstrate an understanding of the nature of language through comparisons of the student's own language and ASL;

(B) demonstrate an understanding of the nature of culture through comparisons of the student's own culture and the American Deaf culture; and

(C) demonstrate an understanding of how one language and culture can influence another.

(5) Communities. The student participates in the Deaf/ASL community by using ASL. The student is expected to:

(A) apply ASL at the novice-to-intermediate proficiency level in and out of the school setting through involvement in cultural activities such as attending Deaf events;

(B) use technology to communicate with the Deaf/ASL community; and

(C) show evidence of becoming a lifelong learner by using ASL at the novice-to-intermediate proficiency level for personal enrichment and career development.

§114.36. American Sign Language, Level III (One Credit), Adopted 2014.

(a) General requirements. Level III can be offered in middle or high school. At the high school level, students shall be awarded one credit for successful completion of this course. American Sign Language (ASL) Levels I and II are prerequisites for this course.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage receptively and expressively in conversations, to present information expressively to an audience, and to comprehend cultural and linguistic aspects of the language. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct signed communication with others without voice. Examples of this "two-way" communication include but are not limited to signing face to face or in a group discussion. Interpersonal communication includes receptive and expressive skills.

(B) In interpretive (receptive) mode of communication, students demonstrate understanding of receptively viewed communication within appropriate cultural contexts. Examples of this type of "one-way" receptive comprehension include but are not limited to ASL video weblogs (or vlogs), other signed presentations, and signed DVD conversations.

(C) In presentational (expressive) mode of communication, students present information in expressive form without voice to an audience of receptive listeners with whom there is no immediate expressive interaction. Examples of this "one-to-many" mode of communication include but are not limited to an expressively signed presentation to a group or recorded in some way where there is no receptive listener present to respond.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the

language and culture studied with their own, and to participate in local and global communities.

(4) ASL difficulty has been determined by standards of the Foreign Service Institute and Defense Language Institute as a Level IV out of four (Level IV being the most difficult). The American Sign Language Teachers Association (ASLTA) states the challenge to ASL is primarily in the modality of learning. This conclusion is based on the complex grammar system and significant structural and cultural differences in the language. Students are generally seated in a semi-circle to facilitate visual communication, notes cannot be taken without looking away from the primary source of information, and instruction occurs in the target language where learning is done spatially and words are not processed sequentially. The linear nature of spoken language cannot be used in ASL and the simultaneous expression of complex units is used. The level of difficulty of ASL should be noted.

(5) While other languages possess a spoken and/or written element, ASL incorporates manual components with no verbal and/or written form. ASL is a fully developed natural language that is used by members of the North American Deaf Community. The language is distinct from gestures seen in spoken languages in that signs used in ASL are controlled by the structures of its linguistic system, independent of English. ASL encompasses all of the features that make a language a unique, rule-governed communication system. ASL includes handshapes, movements, and other grammatical features needed to form signs and sentences, and parts combine to make wholes. It is not a simplified language and contains structures and processes that English does not. The premise of Deaf culture is rooted in the language itself and cannot be separated.

(6) ASL is a signed language where the modes of communication involve different skills than written and/or spoken languages. ASL is not a formal written language; glossing is the term used to describe a chosen written system of symbols devised to transcribe signs and nonmanual signals to an English equivalent. Since ASL information is received visually and not in an auditory manner, communication skills in ASL are defined as follows:

(A) interpretive listening and reading targets are called interpretive receptive;

(B) one-to-one interpersonal targets are called receptive and expressive; and

(C) one-to-many presentational speaking is expressed through signs and the target is presentational expressive.

(7) Using age-appropriate activities, students in ASL Level III expand their ability to perform novice tasks and develop their ability to perform the tasks of the intermediate language learner. The intermediate language learner, when dealing with everyday topics, should understand ASL phrases receptively and respond expressively with learned material; sign learned words, concepts, phrases, and sentences; apply acquired knowledge of Deaf cultural norms to the development of communication skills; and apply knowledge of the components of ASL to increase accuracy of expression. Students use expressive and receptive skills for comprehension.

(8) ASL Level III proficiency levels, as defined by ACTFL and ASLTA, are as follows: interpersonal receptive, intermediate mid; interpersonal expressive, advanced low; interpretive receptive, intermediate low; and presentational expressive, advanced low.

(9) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills at the prescribed

proficiency level and communicate across all modes of communication. According to ASLTA's National K-16 ASL Standards, "heritage language learning is an emerging issue in ASL instruction. The formal instruction of ASL to deaf is a very recent phenomenon, as is the availability of ASL instruction in K-12 settings for hearing children of deaf parents. Heritage language learning is an important and developing interest in the field of ASL teaching and learning."

(10) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Communication. The student communicates in ASL using expressive and receptive communication skills without voice. The student is expected to:

(A) engage in a variety of ASL exchanges of learned material to socialize and to provide and obtain information at an intermediate proficiency level;

(B) demonstrate an understanding of ASL such as stories, commands, and instructions when dealing with familiar and less familiar topics;

(C) convey information in ASL using concepts, classifiers, phrases, and sentences to others without voice at the intermediate proficiency level;

(D) demonstrate appropriate usage of ASL phonology, morphology, syntax, semantics, and pragmatics at the intermediate proficiency level; and

(E) create and express ASL literature, including handshape stories, that follows traditional cultural features.

(2) Cultures. The student gains knowledge and understanding of American Deaf culture. The student is expected to:

(A) apply ASL to recognize and use Deaf cultural norms to demonstrate an understanding of the perspectives of American Deaf culture;

(B) apply ASL to show evidence of appreciation of ASL literature created by the Deaf and how it applies to the perspectives of American Deaf culture;

(C) apply ASL to show evidence of appreciation of the contributions to arts and sciences by the Deaf and how they are applied to the perspectives of American Deaf culture; and

(D) demonstrate an in-depth understanding of Deaf history and how it applies to the perspectives of American Deaf culture.

(3) Connections. The student uses ASL to make connections with other subject areas and to acquire information. The student is expected to:

(A) use resources and digital technology to gain access to in-depth information about ASL and Deaf culture; and

(B) apply ASL at the intermediate proficiency level to obtain, reinforce, or expand knowledge of other subject areas.

(4) Comparisons. The student expands insight into the nature of language and culture by comparing the student's own language and culture to ASL and American Deaf culture. The student is expected to:

(A) apply ASL at the intermediate proficiency level to demonstrate an understanding of the nature of language through comparisons of the student's own language and ASL;

(B) apply ASL at the intermediate proficiency level to demonstrate an understanding of the nature of culture through comparisons of the student's own culture and the American Deaf culture; and

(C) apply ASL at the intermediate proficiency level to demonstrate an understanding of how one language and culture can influence another.

(5) Communities. The student participates in the Deaf/ASL community by using ASL. The student is expected to:

(A) apply ASL at the intermediate proficiency level in and out of the school setting through involvement in cultural activities such as attending Deaf events;

(B) use technology to communicate with the Deaf/ASL community; and

(C) show evidence of becoming a lifelong learner by using ASL at the intermediate proficiency level for personal enrichment and career development.

§114.37. American Sign Language, Level IV (One Credit), Adopted 2014.

(a) General requirements. Level IV can be offered in middle or high school. At the high school level, students shall be awarded one credit for successful completion of this course. American Sign Language (ASL) Levels I, II, and III are prerequisites for this course.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage receptively and expressively in conversations, to present information expressively to an audience, and to comprehend cultural and linguistic aspects of the language. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct signed communication with others without voice. Examples of this "two-way" communication include but are not limited to signing face to face or in a group discussion. Interpersonal communication includes receptive and expressive skills.

(B) In interpretive (receptive) mode of communication, students demonstrate understanding of receptively viewed communication within appropriate cultural contexts. Examples of this type of "one-way" receptive comprehension include but are not limited to ASL video weblogs (or vlogs), other signed presentations, and signed DVD conversations.

(C) In presentational (expressive) mode of communication, students present information in expressive form without voice to an audience of receptive listeners with whom there is no immediate expressive interaction. Examples of this "one-to-many" mode of communication include but are not limited to an expressively signed

presentation to a group or recorded in some way where there is no receptive listener present to respond.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) ASL difficulty has been determined by standards of the Foreign Service Institute and Defense Language Institute as a Level IV out of four (Level IV being the most difficult). The American Sign Language Teachers Association (ASLTA) states the challenge to ASL is primarily in the modality of learning. This conclusion is based on the complex grammar system and significant structural and cultural differences in the language. Students are generally seated in a semi-circle to facilitate visual communication, notes cannot be taken without looking away from the primary source of information, and instruction occurs in the target language where learning is done spatially and words are not processed sequentially. The linear nature of spoken language cannot be used in ASL and the simultaneous expression of complex units is used. The level of difficulty of ASL should be noted.

(5) While other languages possess a spoken and/or written element, ASL incorporates manual components with no verbal and/or written form. ASL is a fully developed natural language that is used by members of the North American Deaf Community. The language is distinct from gestures seen in spoken languages in that signs used in ASL are controlled by the structures of its linguistic system, independent of English. ASL encompasses all of the features that make a language a unique, rule-governed communication system. ASL includes handshapes, movements, and other grammatical features needed to form signs and sentences, and parts combine to make wholes. It is not a simplified language and contains structures and processes that English does not. The premise of Deaf culture is rooted in the language itself and cannot be separated.

(6) ASL is a signed language where the modes of communication involve different skills than written and/or spoken languages. ASL is not a formal written language; glossing is the term used to describe a chosen written system of symbols devised to transcribe signs and nonmanual signals to an English equivalent. Since ASL information is received visually and not in an auditory manner, communication skills in ASL are defined as follows:

(A) interpretive listening and reading targets are called interpretive receptive;

(B) one-to-one interpersonal targets are called receptive and expressive; and

(C) one-to-many presentational speaking is expressed through signs and the target is presentational expressive.

(7) Using age-appropriate activities, students in ASL Level IV expand their ability to perform novice tasks and develop their ability to perform the tasks of the intermediate-to-advanced language learner. The intermediate-to-advanced language learner, when dealing with everyday topics, should understand ASL phrases receptively and respond expressively with learned material at an intermediate-to-advanced proficiency level; sign learned words, concepts, phrases, and sentences at an intermediate-to-advanced proficiency level; apply acquired knowledge of Deaf cultural norms to the development of communication skills; and apply knowledge of the components of ASL to increase accuracy of expression. Students use expressive and receptive skills for comprehension.



(8) ASL Level IV proficiency levels, as defined by ACTFL and ASLTA, are as follows: interpersonal receptive, intermediate high; interpersonal expressive, advanced high; interpretive receptive, intermediate high; and presentational expressive, advanced high.

(9) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills at the prescribed proficiency level and communicate across all modes of communication. According to ASLTA's National K-16 ASL Standards, "heritage language learning is an emerging issue in ASL instruction. The formal instruction of ASL to deaf is a very recent phenomenon, as is the availability of ASL instruction in K-12 settings for hearing children of deaf parents. Heritage language learning is an important and developing interest in the field of ASL teaching and learning."

(10) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Communication. The student communicates in ASL using expressive and receptive communication skills without voice. The student is expected to:

(A) engage in a variety of ASL exchanges of learned material to socialize and to provide and obtain information at an intermediate-to-advanced proficiency level;

(B) demonstrate an understanding of ASL such as stories, commands, and instructions when dealing with familiar and unfamiliar topics;

(C) convey information in ASL using concepts, classifiers, phrases, and sentences to others without voice at the intermediate-to-advanced proficiency level;

(D) demonstrate appropriate usage of ASL phonology, morphology, syntax, semantics, and pragmatics at the intermediate-to-advanced proficiency level; and

(E) create and express ASL literature, including handshape stories, that follows traditional cultural features.

(2) Cultures. The student gains knowledge and understanding of American Deaf culture. The student is expected to:

(A) apply ASL to recognize and use Deaf cultural norms to demonstrate an understanding of the perspectives of American Deaf culture;

(B) apply ASL to show evidence of appreciation of ASL literature created by the Deaf and how it applies to the perspectives of American Deaf culture;

(C) apply ASL to show evidence of appreciation of the contributions to arts and sciences by the Deaf and how they are applied to the perspectives of American Deaf culture; and

(D) demonstrate an in-depth understanding of Deaf history and how it applies to the perspectives of American Deaf culture.

(3) Connections. The student uses ASL to make connections with other subject areas and to acquire information. The student is expected to:

(A) use resources and digital technology to gain access to extensive information on ASL and Deaf culture; and

(B) apply ASL at the intermediate-to-advanced proficiency level to obtain, reinforce, or expand knowledge of other subject areas.

(4) Comparisons. The student expands insight into the nature of language and culture by comparing the student's own language and culture to ASL and American Deaf culture. The student is expected to:

(A) apply ASL at the intermediate-to-advanced proficiency level to demonstrate an understanding of the nature of language through comparisons of the student's own language and ASL;

(B) apply ASL at the intermediate-to-advanced proficiency level to demonstrate an understanding of the nature of culture through comparisons of the student's own culture and the American Deaf culture; and

(C) apply ASL at the intermediate-to-advanced proficiency level to demonstrate an understanding of how one language and culture can influence another.

(5) Communities. The student participates in the Deaf/ASL community by using ASL. The student is expected to:

(A) apply ASL at the intermediate-to-advanced proficiency level in and out of the school setting through involvement in cultural activities such as attending Deaf events;

(B) use technology to communicate with the Deaf/ASL community; and

(C) show evidence of becoming a lifelong learner by using ASL at the intermediate-to-advanced proficiency level for personal enrichment and career development.

§114.38. American Sign Language, Advanced Independent Study (One Credit), Adopted 2014.

(a) General requirements. American Sign Language Advanced Independent Study (ASL AIS) can be offered in high school. Students shall be awarded one credit for successful completion of this course. This course can be taken up to three times for state credit. ASL Levels I, II, III, and IV are prerequisites for this course.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage receptively and expressively in conversations, to present information expressively to an audience, and to comprehend cultural and linguistic aspects of the language. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct signed communication with others without voice. Examples of this "two-way" communication include but are not limited to signing face to face or in a group discussion. Interpersonal communication includes receptive and expressive skills.

(B) In interpretive (receptive) mode of communication, students demonstrate understanding of receptively viewed communication within appropriate cultural contexts. Examples of this type of "one-way" receptive comprehension include but are not limited to ASL video weblogs (or vlogs), other signed presentations, and signed DVD conversations.

(C) In presentational (expressive) mode of communication, students present information in expressive form without voice to an audience of receptive listeners with whom there is no immediate expressive interaction. Examples of this "one-to-many" mode of communication include but are not limited to an expressively signed presentation to a group or recorded in some way where there is no receptive listener present to respond.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) ASL difficulty has been determined by standards of the Foreign Service Institute and Defense Language Institute as a Level IV out of four (Level IV being the most difficult). The American Sign Language Teachers Association (ASLTA) states the challenge to ASL is primarily in the modality of learning. This conclusion is based on the complex grammar system and significant structural and cultural differences in the language. Students are generally seated in a semi-circle to facilitate visual communication, notes cannot be taken without looking away from the primary source of information, and instruction occurs in the target language where learning is done spatially and words are not processed sequentially. The linear nature of spoken language cannot be used in ASL and the simultaneous expression of complex units is used. The level of difficulty of ASL should be noted.

(5) While other languages possess a spoken and/or written element, ASL incorporates manual components with no verbal and/or written form. ASL is a fully developed natural language that is used by members of the North American Deaf Community. The language is distinct from gestures seen in spoken languages in that signs used in ASL are controlled by the structures of its linguistic system, independent of English. ASL encompasses all of the features that make a language a unique, rule-governed communication system. ASL includes handshapes, movements, and other grammatical features needed to form signs and sentences, and parts combine to make wholes. It is not a simplified language and contains structures and processes that English does not. The premise of Deaf culture is rooted in the language itself and cannot be separated.

(6) ASL is a signed language where the modes of communication involve different skills than written and/or spoken languages. ASL is not a formal written language; glossing is the term used to describe a chosen written system of symbols devised to transcribe signs and nonmanual signals to an English equivalent. Since ASL information is received visually and not in an auditory manner, communication skills in ASL are defined as follows:

(A) interpretive listening and reading targets are called interpretive receptive;

(B) one-to-one interpersonal targets are called receptive and expressive; and

(C) one-to-many presentational speaking is expressed through signs and the target is presentational expressive.

(7) Using age-appropriate activities, students in ASL Advanced Independent Study expand their ability to perform intermediate-to-advanced tasks and develop their ability to perform the tasks of the advanced language learner. The advanced language learner, when dealing with everyday topics, should understand ASL phrases receptively and respond expressively with learned material at an intermediate-to-advanced proficiency level; sign learned words, concepts, phrases, and sentences at an advanced proficiency level; apply acquired knowledge of Deaf cultural norms to the development of extensive communication skills; and apply knowledge of the components of ASL to increase accuracy of expression. Students use expressive and receptive skills for comprehension.

(8) ASL Advanced Independent Study proficiency levels, as defined by ACTFL and ASLTA, are as follows: interpersonal receptive, advanced; interpersonal expressive, advanced; interpretive receptive, novice intermediate; and presentational expressive, advanced.

(9) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills at the prescribed proficiency level and communicate across all modes of communication. According to ASLTA's National K-16 ASL Standards, "heritage language learning is an emerging issue in ASL instruction. The formal instruction of ASL to deaf is a very recent phenomenon, as is the availability of ASL instruction in K-12 settings for hearing children of deaf parents. Heritage language learning is an important and developing interest in the field of ASL teaching and learning."

(10) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Communication. The student communicates in ASL using expressive and receptive communication skills without voice. The student is expected to:

(A) engage in a variety of ASL exchanges of learned material to socialize and to provide and obtain information at an advanced proficiency level;

(B) demonstrate an in-depth understanding of ASL such as stories, commands, and instructions when dealing with familiar and unfamiliar topics;

(C) convey information in ASL using concepts, classifiers, phrases, and sentences to others without voice at the advanced proficiency level;

(D) demonstrate appropriate usage of ASL phonology, morphology, syntax, semantics, and pragmatics at the advanced proficiency level; and

(E) create and express ASL literature, including handshape stories, that follows traditional cultural features.

(2) Cultures. The student gains knowledge and understanding of American Deaf culture. The student is expected to:

(A) apply ASL to recognize and use Deaf cultural norms to demonstrate an in-depth understanding of the perspectives of American Deaf culture;

(B) apply ASL to show evidence of an in-depth appreciation of ASL literature created by the Deaf and how it applies to the perspectives of American Deaf culture;

(C) apply ASL to show evidence of an in-depth appreciation of the contributions to arts and sciences by the Deaf and how they are applied to the perspectives of American Deaf culture; and

(D) demonstrate an in-depth understanding of Deaf history and how it applies to the perspectives of American Deaf culture.

(3) Connections. The student uses ASL to make connections with other subject areas and to acquire information. The student is expected to:

(A) use resources and digital technology to gain access to extensive information about ASL and Deaf culture; and

(B) apply ASL at the advanced proficiency level to obtain, reinforce, or expand knowledge of other subject areas.

(4) Comparisons. The student expands insight into the nature of language and culture by comparing the student's own language and culture to ASL and American Deaf culture. The student is expected to:

(A) apply ASL at the advanced proficiency level to demonstrate an understanding of the nature of language through comparisons of the student's own language and ASL;

(B) apply ASL at the advanced proficiency level to demonstrate an understanding of the nature of culture through comparisons of the student's own culture and the American Deaf culture; and

(C) apply ASL at the advanced proficiency level to demonstrate an understanding of how one language and culture can influence another.

(5) Communities. The student participates in the Deaf/ASL community by using ASL. The student is expected to:

(A) apply ASL at the advanced proficiency level in and out of the school setting through involvement in cultural activities such as attending Deaf events;

(B) use technology to communicate with the Deaf/ASL community; and

(C) show evidence of becoming a lifelong learner by using ASL at the advanced proficiency level for personal enrichment and career development.

§114.39. Level I, Novice Mid to Novice High Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level I can be offered in elementary, middle, or high school. At the high school level, students shall be awarded one credit for successful completion of this course. There is no prerequisite for this course.

(2) Students of classical languages such as Latin and Greek read and comprehend proficiency level-appropriate authentic texts of prose and poetry of selected authors. The communicative skills of listening, speaking, and writing are used to enhance the interpretive communication mode of reading.

(3) Students of logographic languages such as Chinese and Japanese and non-Romance and non-Germanic languages such as Arabic and Russian will require more time to achieve proficiency, especially in reading and writing. Initially, the skill focus should be placed on speaking and listening without ignoring reading and writing in the target language's writing system. As the students become more proficient, a more balanced emphasis of all four skills is expected.

(4) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional

schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) Students recognize the importance of acquiring accuracy of expression by knowing the components of language, including grammar, syntax, register, appropriate discourse level, and text type.

(5) Students in Level I are expected to reach a proficiency level of Novice Mid to Novice High, as defined in the ACTFL Proficiency Guidelines 2012 and the ACTFL Performance Descriptors for Language Learners.

(A) Students at the Novice Mid proficiency level express meaning in highly predictable contexts through the use of memorized and recalled words and phrases. They are best able to understand aural cognates, borrowed words, and high-frequency, highly contextualized words and phrases with repetition. Novice Mid students may be

difficult to understand by the most sympathetic listeners and readers accustomed to dealing with language learners. Novice Mid students are inconsistently successful when performing Novice-level tasks.

(B) Students at the Novice High proficiency level express meaning in simple, predictable contexts through the use of learned and recombined phrases and short sentences. They are best able to understand sentence-length information within highly contextualized situations and sources. Novice High students may generally be understood by sympathetic listeners and readers accustomed to dealing with language learners. Novice High students are consistently successful when performing Novice-level tasks. Novice High students show evidence of Intermediate Low proficiency but lack consistency.

(C) Students of classical languages should reach a Novice Mid proficiency level in listening at the end of Level I. Students of classical languages should reach a Novice High to Intermediate Low proficiency level in reading at the end of Level I. Students of classical languages should reach a Novice Mid proficiency level in speaking at the end of Level I. Students of classical languages should reach a Novice Mid proficiency level in writing at the end of Level I.

(D) By the end of Level I, students of logographic languages and non-Romance and non-Germanic languages should perform on a Novice Mid proficiency level for reading and writing. In listening and speaking, students of logographic languages and non-Romance and non-Germanic languages should perform on a Novice Mid to Novice High proficiency level.

(E) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills for LOTE across all modes of communication at the prescribed proficiency level.

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student negotiates meaning through the spoken and written exchange of information in rehearsed and unrehearsed situations in a variety of contexts. The student uses a mixture of words and phrases and some simple sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) ask and respond to questions about everyday life in spoken and written conversation;

(B) express and exchange personal opinions or preferences in spoken and written conversation;

(C) ask and tell others what they need to, should, or must do in spoken and written conversation;

(D) articulate requests, offer alternatives, or develop simple plans in spoken and written conversation;

(E) participate in spoken conversation using culturally appropriate expressions, register, and gestures; and

(F) participate in written conversation using culturally appropriate expressions, register, and style.

(2) Interpretive communication: reading and listening. The student comprehends sentence-length information from culturally authentic print, digital, audio, and audiovisual materials as appropriate

within highly contextualized situations and sources. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes at the specified proficiency levels. The student is expected to:

(A) demonstrate an understanding of culturally authentic print, digital, audio, and audiovisual materials in everyday contexts;

(B) identify key words and details from fiction and non-fiction texts and audio and audiovisual materials;

(C) infer meaning of unfamiliar words or phrases in highly contextualized texts, audio, and audiovisual materials; and

(D) identify cultural practices from authentic print, digital, audio, and audiovisual materials.

(3) Presentational communication: speaking and writing. The student presents information orally and in writing using a mixture of words and phrases and some simple sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) state and support an opinion or preference orally and in writing; and

(B) describe people, objects, and simple situations orally and in writing using a mixture of words, phrases, and simple sentences.

*§114.40. Level II, Novice High to Intermediate Low Proficiency (One Credit), Adopted 2014.*

(a) General requirements.

(1) Level II can be offered in elementary, middle, or high school. At the high school level, students shall be awarded one credit for successful completion of this course. Successful completion of Level I, achieving a Novice Mid to Novice High proficiency level, or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages such as Latin and Greek read and comprehend proficiency level-appropriate authentic texts of prose and poetry of selected authors. The communicative skills of listening, speaking, and writing are used to enhance the interpretive communication mode of reading.

(3) Students of logographic languages such as Chinese and Japanese and non-Romance and non-Germanic languages such as Arabic and Russian will require more time to achieve proficiency, especially in reading and writing. Initially, the skill focus should be placed on speaking and listening without ignoring reading and writing in the target language's writing system. As the students become more proficient, a more balanced emphasis of all four skills is expected.

(4) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in

more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) Students recognize the importance of acquiring accuracy of expression by knowing the components of language, including grammar, syntax, register, appropriate discourse level, and text type.

(5) Students in Level II are expected to reach a proficiency level of Novice High to Intermediate Low, as defined in the ACTFL Proficiency Guidelines 2012 and the ACTFL Performance Descriptors for Language Learners.

(A) Students at the Novice High proficiency level express meaning in simple, predictable contexts through the use of learned and recombined phrases and short sentences. Novice High students are best able to understand sentence-length information within highly contextualized situations and sources. Novice High students may generally be understood by sympathetic listeners and readers accustomed to dealing with language learners. Novice High students are consistently successful when performing Novice-level tasks. Novice High students show evidence of Intermediate Low proficiency but lack consistency.

(B) Students at the Intermediate Low proficiency level express meaning in straightforward and personal contexts by combining and recombining what they know, what they read, and what they hear in short statements and sentences. Intermediate Low students are able to understand some information from simple connected statements in oral or written sources. Intermediate Low students are generally understood by sympathetic listeners and readers accustomed to dealing

with language learners. Intermediate Low students are inconsistently successful when performing Intermediate-level tasks.

(C) Students of classical languages should reach a Novice Mid to Novice High proficiency level in listening at the end of Level II. Students of classical languages should reach an Intermediate Low proficiency level in reading at the end of Level II. Students of classical languages should reach a Novice Mid proficiency level in speaking at the end of Level II. Students of classical languages should reach a Novice High proficiency level in writing at the end of Level II.

(D) By the end of Level II, students of logographic languages and non-Romance and non-Germanic languages should perform on a Novice High proficiency level for reading and writing. In listening and speaking, students of logographic languages and non-Romance and non-Germanic languages should perform on a Novice High to Intermediate Low proficiency level.

(E) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills for LOTE across all modes of communication at the prescribed proficiency level.

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student negotiates meaning through the spoken and written exchange of information in rehearsed and unrehearsed situations in a variety of contexts. The student uses a mixture of short statements and sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) ask and respond to questions about everyday life with simple elaboration in spoken and written conversation;

(B) express and exchange personal opinions or preferences with simple supporting statements in spoken and written conversation;

(C) ask and tell others what they need to, should, or must do with simple supporting reasons in spoken and written conversation;

(D) articulate requests, offer alternatives, and develop plans with simple supporting statements in spoken and written conversation;

(E) interact and react in spoken conversation using culturally appropriate expressions, register, and gestures; and

(F) interact and react in writing using culturally appropriate expressions, register, and style.

(2) Interpretive communication: reading and listening. The student comprehends simple connected statements from culturally authentic print, digital, audio, and audiovisual materials as appropriate within contextualized situations and sources. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes at the specified proficiency levels. The student is expected to:

(A) demonstrate an understanding of culturally authentic print, digital, audio, and audiovisual materials in everyday contexts;

(B) identify the main idea, theme, and supporting details from fiction and nonfiction texts and audio and audiovisual materials;

(C) infer meaning of unfamiliar words or phrases in highly contextualized texts, audio, and audiovisual materials; and

(D) identify cultural practices from authentic print, digital, audio, and audiovisual materials.

(3) Presentational communication: speaking and writing. The student presents information orally and in writing using a mixture of phrases and sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) express and support an opinion or preference orally and in writing with supporting statements; and

(B) describe people, objects, and situations orally and in writing using a series of sequenced sentences with essential details and simple elaboration.

§114.41. Level III, Intermediate Low to Intermediate Mid Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level III can be offered in middle or high school. At the high school level, students shall be awarded one credit for successful completion of this course. Successful completion of Level II, achieving a Novice High to Intermediate Low proficiency level, or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages such as Latin and Greek read and comprehend proficiency level-appropriate authentic texts of prose and poetry of selected authors. The communicative skills of listening, speaking, and writing are used to enhance the interpretive communication mode of reading.

(3) Students of logographic languages such as Chinese and Japanese and non-Romance and non-Germanic languages such as Arabic and Russian will require more time to achieve proficiency, especially in reading and writing. Initially, the skill focus should be placed on speaking and listening without ignoring reading and writing in the target language's writing system. As the students become more proficient, a more balanced emphasis of all four skills is expected.

(4) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to

interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) Students recognize the importance of acquiring accuracy of expression by knowing the components of language, including grammar, syntax, register, appropriate discourse level, and text type.

(5) Students in Level III are expected to reach a proficiency level of Intermediate Low to Intermediate Mid, as defined in the ACTFL Proficiency Guidelines 2012 and the ACTFL Performance Descriptors for Language Learners.

(A) Students at the Intermediate Low proficiency level express meaning in straightforward and personal contexts by combining and recombining what they know, what they read, and what they hear in short statements and sentences. Intermediate Low students are able to understand some information from simple connected statements in oral or written sources. Intermediate Low students are generally understood by sympathetic listeners and readers accustomed to dealing with language learners. Intermediate Low students are inconsistently successful when performing Intermediate-level tasks.

(B) Students at the Intermediate Mid proficiency level express meaning in straightforward and personal contexts by easily combining and recombining what they know, what they read, and what they hear in short statements and a mixture of sentences and strings of sentences. Intermediate Mid students are able to understand some information from connected statements in oral or written sources. Intermediate Mid students are generally understood by sympathetic listeners and readers accustomed to dealing with language learners. Intermediate Mid students are consistently successful when performing Intermediate-level tasks.

(C) Students of classical languages should reach an Intermediate Low to Intermediate Mid proficiency level in listening at the end of Level III. Students of classical languages should reach an Intermediate Mid proficiency level in reading at the end of Level III. Students of classical languages should reach a Novice High proficiency

level in speaking at the end of Level III. Students of classical languages should reach an Intermediate Low proficiency level in writing at the end of Level III.

(D) By the end of Level III, students of logographic languages and non-Romance and non-Germanic languages should perform on an Intermediate Low proficiency level for reading and writing. In listening and speaking, students of logographic languages and non-Romance and non-Germanic languages should perform on an Intermediate Low to Intermediate Mid proficiency level.

(E) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills for LOTE across all modes of communication at the prescribed proficiency level.

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student negotiates meaning through the spoken and written exchange of information in rehearsed and unrehearsed situations in a variety of contexts. The student uses a mixture of short statements, sentences, and strings of sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) ask and respond to questions about and beyond the scope of everyday life with simple elaboration in spoken and written conversation;

(B) express and exchange personal opinions, preferences, and recommendations with supporting statements in spoken and written conversation;

(C) ask and tell others what they need to, should, and must do with supporting reasons in spoken and written conversation;

(D) articulate requests, offer suggestions, and develop plans with supporting statements in spoken and written conversation;

(E) interact and react in spoken conversation using culturally appropriate expressions, register, and gestures; and

(F) interact and react in writing using culturally appropriate expressions, register, and style.

(2) Interpretive communication: reading and listening. The student comprehends connected statements from culturally authentic print, digital, audio, and audiovisual materials as appropriate within contextualized situations and sources. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes at the specified proficiency levels. The student is expected to:

(A) demonstrate an understanding of culturally authentic print, digital, audio, and audiovisual materials in a variety of contexts;

(B) paraphrase the main idea, theme, and supporting details from fiction and nonfiction texts and audio and audiovisual materials;

(C) infer meaning of unfamiliar words or phrases in contextualized texts, audio, and audiovisual materials; and

(D) compare and contrast cultural practices from authentic print, digital, audio, and audiovisual materials.

(3) Presentational communication: speaking and writing. The student presents information orally and in writing using a mixture of phrases, sentences, and strings of sentences with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) express and defend an opinion or preference orally and in writing with supporting statements and with recommendations;

(B) narrate situations and events orally and in writing using connected sentences with details and elaboration; and

(C) inform others orally and in writing about a variety of topics using connected sentences with details and elaboration.

*§114.42. Level IV, Intermediate Mid to Intermediate High Proficiency (One Credit), Adopted 2014.*

(a) General requirements.

(1) Level IV can be offered in middle or high school. At the high school level, students shall be awarded one credit for successful completion of this course. Successful completion of Level III, achieving an Intermediate Low to Intermediate Mid proficiency level, or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages such as Latin and Greek read and comprehend proficiency level-appropriate authentic texts of prose and poetry of selected authors. The communicative skills of listening, speaking, and writing are used to enhance the interpretive communication mode of reading.

(3) Students of logographic languages such as Chinese and Japanese and non-Romance and non-Germanic languages such as Arabic and Russian will require more time to achieve proficiency, especially in reading and writing. Initially, the skill focus should be placed on speaking and listening without ignoring reading and writing in the target language's writing system. As the students become more proficient, a more balanced emphasis of all four skills is expected.

(4) Districts may offer a level of a language in a variety of scheduling arrangements that may extend or reduce the traditional schedule when careful consideration is given to the instructional time available on a campus and the language ability, access to programs, and motivation of students.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) Students recognize the importance of acquiring accuracy of expression by knowing the components of language, including grammar, syntax, register, appropriate discourse level, and text type.

(5) Students in Level IV are expected to reach a proficiency level of Intermediate Mid to Intermediate High, as defined in the ACTFL Proficiency Guidelines 2012 and the ACTFL Performance Descriptors for Language Learners.

(A) Students at the Intermediate Mid proficiency level express meaning in straightforward and personal contexts by easily combining and recombining what they know, what they read, and what they hear in short statements and a mixture of sentences and strings of sentences. Intermediate Mid students are able to understand some information from connected statements in oral or written sources. Intermediate Mid students are generally understood by sympathetic listeners and readers accustomed to dealing with language learners. Intermediate Mid students are consistently successful when performing Intermediate-level tasks.

(B) Students at the Intermediate High proficiency level express meaning in a variety of contexts by creating with the language, easily combining and recombining what they know, what they read, and what they hear in a mixture of sentences and connected discourse. Intermediate High students are able to understand information from connected statements in oral or written sources. Intermediate High students are generally understood by listeners and readers unaccustomed to dealing with language learners. Intermediate High students are consistently successful when performing Intermediate-level tasks. Intermediate High students show evidence of Advanced Low proficiency but lack consistency.

(C) Students of classical languages should reach an Intermediate Low to Intermediate Mid proficiency level in listening at the end of Level IV. Students of classical languages should reach an Intermediate High proficiency level in reading at the end of Level IV. Students of classical languages should reach a Novice High proficiency level in speaking at the end of Level IV. Students of classical languages

should reach an Intermediate Mid-Intermediate High proficiency level in writing at the end of Level IV.

(D) By the end of Level IV, students of logographic languages and non-Romance and non-Germanic languages should perform on an Intermediate Mid proficiency level for reading and writing. In listening and speaking, students of logographic languages and non-Romance and non-Germanic languages should perform on should perform on an Intermediate Mid to Intermediate High proficiency level.

(E) Students who have fully or partially acquired the skills required at each proficiency level through home or other immersion experiences are known as heritage speakers. Heritage speakers may be allowed to accelerate based on their ability to demonstrate a proficiency in the Texas essential knowledge and skills for LOTE across all modes of communication at the prescribed proficiency level.

(6) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student negotiates meaning through the spoken and written exchange of information in rehearsed and unrehearsed situations in a variety of contexts. The student uses a mixture of sentences and connected discourse with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) ask and respond to questions about and beyond the scope of everyday life with elaboration in spoken and written conversation;

(B) ask and respond to questions in unfamiliar contexts in spoken and written conversation with limited details;

(C) express and exchange personal opinions, preferences, and recommendations with supporting elaborative statements in spoken and written conversation;

(D) ask and tell others what they need to, should, and must do using detailed rationale in spoken and written conversation;

(E) articulate requests, offer suggestions, and develop plans with supporting elaborative statements in spoken and written conversation;

(F) interact and react in spoken conversation using culturally appropriate expressions, register, and gestures; and

(G) interact and react in writing using culturally appropriate expressions, register, and style.

(2) Interpretive communication: reading and listening. The student comprehends connected statements from culturally authentic print, digital, audio, and audiovisual materials as appropriate within contextualized situations and sources. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes at the specified proficiency levels. The student is expected to:

(A) analyze culturally authentic print, digital, audio, and audiovisual materials in a variety of contexts;

(B) paraphrase and analyze the main idea, theme, and supporting details from fiction and nonfiction texts and audio and audiovisual materials;

(C) infer meaning of unfamiliar words or phrases in texts, audio, and audiovisual materials; and



(D) compare and contrast cultural practices and perspectives from authentic print, digital, audio, and audiovisual materials.

(3) Presentational communication: speaking and writing. The student presents information orally and in writing using a mixture of sentences and connected discourse with appropriate and applicable grammar structures and processes at the specified proficiency levels. The student is expected to:

(A) express and defend an opinion or persuade others orally and in writing with supporting elaborative statements and with recommendations;

(B) narrate situations and events orally and in writing using connected sentences and some connected discourse with details and elaboration; and

(C) inform others orally and in writing about a variety of topics using connected sentences and some connected discourse with details and elaboration.

§114.43. Level V, Intermediate High to Advanced Mid Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level V can be offered in high school. Students shall be awarded one credit for successful completion of this course. Successful completion of Level IV, achieving an Intermediate Mid to Intermediate High proficiency level in the four skills of listening, reading, writing, and speaking, or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages read and comprehend on-level authentic texts of prose and poetry of selected authors. The skills of listening, speaking, and writing are used to reinforce the skill of reading. Students of classical languages may reach an Intermediate High proficiency level in reading during Level V.

(3) Students of logographic languages, whose characters often represent parts of words as well as whole words, read and comprehend authentic texts on level. The skill focus should be placed on speaking and listening without ignoring reading and writing, including the use of complex characters. By the end of Level V, students are expected to perform on an Intermediate High to Advanced Mid proficiency level in listening, speaking, and reading while performing on a Novice High to Intermediate Low proficiency level in writing. At all levels, integration of the four skills is essential for progress toward the next proficiency level.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL)

identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for LOTE. The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) The three modes of communication (interpersonal, interpretive, and presentational) provide the organizing principle for describing language performance across all ranges of performance: Novice, Intermediate, Advanced, Superior, and Distinguished.

(A) The interpersonal mode is characterized by the active negotiation of meaning among individuals. Participants observe and monitor one another to see how their meanings and intentions are being communicated. Adjustments and clarifications can be made accordingly.

(B) The interpretive mode focuses on the appropriate cultural interpretation of meanings that occur in written and spoken form where there is no recourse to the active negotiation of meaning with the writer or the speaker.

(C) The presentational mode refers to the creation of oral and written messages in a manner that facilitates interpretation by members of the other culture where no direct opportunity for the active negotiation of meaning between members of the two cultures exists.

(5) All student expectations and modes of communication are aligned with and address the ACTFL National Standards for Foreign Language Education: Communication, Cultures, Connections, Comparisons, and Communities.

(6) Students will perform on the Intermediate High to Advanced Mid proficiency level as described by the ACTFL Proficiency Guidelines 2012.

(7) The Intermediate High to Advanced Mid student communicates in a language other than English using all three modes and all four skills.

(8) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student communicates in the interpersonal mode using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The interpersonal mode is the ability to understand and exchange information in the target language. The student is expected to:

(A) engage in conversations with generally consistent use of register in all time frames;

(B) verbally exchange information with generally consistent use of register on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities;

(C) write with generally consistent use of register and in all time frames items such as correspondence, narratives, descriptions, and summaries of a factual nature; and

(D) produce, with generally consistent use of register, written exchanges that provide information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities.

(2) Interpretive communication: reading and listening. The student uses the interpretive mode in communication with appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The interpretive mode focuses on comprehending main ideas and identifying some supporting details in the target language. The student is expected to:

(A) read and analyze information from a variety of authentic print and electronic resources such as artwork, graphs, media, narratives, and descriptions in various literary genres, including texts about past, present, and future events that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities;

(B) compare, contrast, and analyze cultural practices and perspectives from authentic print and electronic resources;

(C) listen to and analyze information from a variety of authentic audio and audiovisual resources from the target culture that communicate information in the past, present, and future on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities; and

(D) compare, contrast, and analyze cultural practices and perspectives from authentic audio and audiovisual resources.

(3) Presentational communication: speaking and writing. The student communicates using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The presentational mode refers to the creation of oral and written messages in the target language. The student's presentation is comprehensible to an audience unaccustomed to interacting with language learners. The student is expected to:

(A) plan, produce, and present, with some ease and clarity of expression, spoken presentational communications that are supported with cited examples in multiple paragraph length discourse to explain, express opinions, describe, and narrate on topics that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities; and

(B) plan and produce, with some ease and clarity of expression, written presentational communications that are supported with cited examples in multiple paragraph length discourse to explain, express opinions, describe, and narrate on topics that communicate in-

formation on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities.

§114.44. Level VI, Advanced Mid to Advanced High Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level VI can be offered in high school. Students shall be awarded one credit for successful completion of this course. Successful completion of Level V, achieving an Intermediate High to Advanced Mid proficiency level in the four skills of listening, reading, writing, and speaking, or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages read and comprehend on-level authentic texts of prose and poetry of selected authors. The skills of listening, speaking, and writing are used to reinforce the skill of reading. Students of classical languages may reach an Advanced Mid proficiency level in reading during Level VI.

(3) Students of logographic languages, whose characters often represent parts of words as well as whole words, read and comprehend authentic texts on level. The skill focus should be placed on speaking and listening without ignoring reading and writing, including the use of complex characters. By the end of Level VI, students are expected to perform on an Advanced Mid to Advanced High proficiency level in listening, speaking, and reading while performing on an Intermediate Low to Intermediate Mid proficiency level in writing. At all levels, integration of the four skills is essential for progress toward the next proficiency level.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to

an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for LOTE. The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) The three modes of communication (interpersonal, interpretive, and presentational) provide the organizing principles for describing language performance across all ranges of performance: Novice, Intermediate, Advanced, Superior, and Distinguished.

(A) The interpersonal mode is characterized by the active negotiation of meaning among individuals. Participants observe and monitor one another to see how their meanings and intentions are being communicated. Adjustments and clarifications can be made accordingly.

(B) The interpretive mode focuses on the appropriate cultural interpretation of meanings that occur in written and spoken form where there is no recourse to the active negotiation of meaning with the writer or the speaker.

(C) The presentational mode refers to the creation of oral and written messages in a manner that facilitates interpretation by members of the other culture where no direct opportunity for the active negotiation of meaning between members of the two cultures exists.

(5) All student expectations and modes of communication are aligned with and address the ACTFL National Standards for Foreign Language Education: Communication, Cultures, Connections, Comparisons, and Communities.

(6) Students will perform on an Advanced Mid to Advanced High proficiency level as described by the ACTFL Proficiency Guidelines 2012.

(7) The Advanced Mid to Advanced High student communicates in a language other than English using all three modes and all four skills.

(8) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal Communication: speaking and writing. The student communicates in the interpersonal mode using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The interpersonal mode is the ability to understand and exchange information in the target language. The student is expected to:

(A) engage in conversations with mostly consistent use of register in all time frames;

(B) verbally exchange information with mostly consistent use of register on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities;

(C) write with mostly consistent use of register in all time frames and with some elaboration items such as correspondence, narratives, descriptions, and summaries of a factual nature; and

(D) produce, with mostly consistent use of register, written exchanges that provide information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities.

(2) Interpretive communication: reading and listening. The student uses the interpretive mode in communication using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The interpretive mode focuses on comprehending main ideas and identifying some supporting details in the target language. The student is expected to:

(A) read and appraise information from a variety of authentic print and electronic resources such as artwork, graphs, media, narratives, and descriptions in various literary genres, including texts about past, present, and future events that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities;

(B) compare, contrast, and appraise cultural practices and perspectives from authentic print and electronic resources;

(C) listen to and appraise information from a variety of authentic audio and audiovisual resources from the target culture that communicate information in the past, present, and future on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities; and

(D) compare, contrast, and appraise cultural practices and perspectives from authentic audio and audiovisual resources.

(3) Presentational communication: speaking and writing. The student communicates using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The presentational mode refers to the creation of oral and written messages in the target language. The student's presentation is comprehensible to an audience unaccustomed to interacting with language learners. The student is expected to:

(A) plan, produce, and present, with mostly consistent ease and clarity of expression, spoken presentational communications that are supported with cited examples in multiple paragraph length discourse to explain, express opinions, describe, and narrate on topics that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities; and

(B) plan and produce, with mostly consistent ease and clarity of expression, written presentational communications that are supported with cited examples in multiple paragraph length discourse to explain, express opinions, describe, and narrate on topics that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities.

§114.45. Level VII, Advanced High to Superior Proficiency (One Credit), Adopted 2014.

(a) General requirements.

(1) Level VII can be offered in high school. Students shall be awarded one credit for successful completion of this course. Successful completion of Level VI, achieving an Advanced Mid to Advanced High proficiency level in the four skills of listening, reading, writing, and speaking, or demonstrated equivalent proficiency as determined by the district is a prerequisite for this course.

(2) Students of classical languages read and comprehend on-level authentic texts of prose and poetry of selected authors. The skills of listening, speaking, and writing are used to reinforce the skill of reading. Students of classical languages may reach Advanced Mid proficiency in reading during Level VII.

(3) Students of logographic languages, whose characters often represent parts of words as well as whole words, read and comprehend authentic texts on level. The skill focus should be placed on speaking and listening without ignoring reading and writing, including the use of complex characters. By the end of Level VII, students are expected to perform on an Advanced High to Superior level in listening, speaking, and reading while performing on an Intermediate Low to Intermediate Mid level in writing. At all levels, integration of the four skills is essential for progress toward the next proficiency level.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. The American Council on the Teaching of Foreign Languages (ACTFL) identifies three modes of communication: interpersonal, interpretive and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for LOTE. The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) The three modes of communication (interpersonal, interpretive, and presentational) provide the organizing principles for describing language performance across all ranges of performance: Novice, Intermediate, Advanced, Superior, and Distinguished.

(A) The interpersonal mode is characterized by the active negotiation of meaning among individuals. Participants observe and monitor one another to see how their meanings and intentions are

being communicated. Adjustments and clarifications can be made accordingly.

(B) The interpretive mode focuses on the appropriate cultural interpretation of meanings that occur in written and spoken form where there is no recourse to the active negotiation of meaning with the writer or the speaker.

(C) The presentational mode refers to the creation of oral and written messages in a manner that facilitates interpretation by members of the other culture where no direct opportunity for the active negotiation of meaning between members of the two cultures exists.

(5) All student expectations and modes of communication are aligned with and address the ACTFL National Standards for Foreign Language Education: Communication, Cultures, Connections, Comparisons, and Communities.

(6) Students will perform on an Advanced High to Superior proficiency level as described by the ACTFL Proficiency Guidelines 2012.

(7) The Advanced High to Superior student communicates in a language other than English using all three modes and all four skills.

(8) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Interpersonal communication: speaking and writing. The student communicates in the interpersonal mode using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The interpersonal mode is the ability to understand and exchange information in the target language. The student is expected to:

(A) engage in conversations with consistent use of register in all time frames;

(B) verbally exchange information with consistent use of register on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities;

(C) write with consistent use of register in all time frames and with elaboration items such as correspondence, narratives, descriptions, and summaries of a factual nature; and

(D) produce, with consistent use of register, written exchanges that provide information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities.

(2) Interpretive communication: reading and listening. The student uses the interpretive mode in communication using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The interpretive mode focuses on comprehending main ideas and identifying some supporting details in the target language. The student is expected to:

(A) read and synthesize information from a variety of authentic print and electronic resources such as artwork, graphs, media, narratives, and descriptions in various literary genres, including texts about past, present, and future events that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities;

(B) compare, contrast, and synthesize cultural practices and perspectives from authentic print and electronic resources;

(C) listen to and synthesize information from a variety of authentic audio and audiovisual resources from the target culture that communicate information in the past, present, and future on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities; and

(D) compare, contrast, and synthesize cultural practices and perspectives from authentic audio and audiovisual resources.

(3) Presentational communication: speaking and writing. The student communicates using appropriate and applicable grammatical structures and processes in the target language at the specified proficiency levels. The presentational mode refers to the creation of oral and written messages in the target language. The student's presentation is comprehensible to an audience unaccustomed to interacting with language learners. The student is expected to:

(A) plan, produce, and present, with consistent ease and clarity of expression, spoken presentational communications that are supported with cited examples in multiple paragraph length discourse to explain, express opinions, describe, and narrate on topics that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities; and

(B) plan and produce, with consistent ease and clarity of expression, written presentational communications that are supported with cited examples in multiple paragraph length discourse to explain, express opinions, describe, and narrate on topics that communicate information on a variety of geographic, scientific, historical, artistic, social, or political features of target culture communities.

§114.46. Seminar in Languages Other Than English, Advanced (One-Half to One Credit), Adopted 2014.

(a) General requirements. Students shall be awarded one-half to one credit for successful completion of this course. All products and presentations must be in the target language. A prerequisite to enroll into this course is a minimum performance level of Intermediate Mid to Advanced High on the American Council on the Teaching of Foreign Languages (ACTFL) scale. The student may take this course with different course content for a maximum of three credits. The course shall be conducted in the target language.

(b) Introduction.

(1) The study of world languages is an essential part of education. In the 21st century language classroom, students gain an understanding of two basic aspects of human existence: the nature of communication and the complexity of culture. Students become aware of multiple perspectives and means of expression, which lead to an appreciation of difference and diversity. Further benefits of foreign language study include stronger cognitive development, increased creativity, and divergent thinking. Students who effectively communicate in more than one language, with an appropriate understanding of cultural context, are globally literate and possess the attributes of successful participants in the world community.

(2) Communication is the overarching goal of world language instruction. Students should be provided ample opportunities to engage in conversations, to present information to an audience, and to interpret culturally authentic materials in the language of study. ACTFL identifies three modes of communication: interpersonal, interpretive, and presentational.

(A) In the interpersonal mode of communication, students engage in direct oral or written communication with others. Examples of this "two-way" communication include but are not limited to conversing face to face, participating in digital discussions and messaging, and exchanging personal letters.

(B) In the interpretive mode of communication, students demonstrate understanding of spoken and written communication within appropriate cultural contexts. Examples of this type of "one-way" reading or listening include but are not limited to comprehension of digital texts as well as print, audio, and audiovisual materials.

(C) In the presentational mode of communication, students present orally or in writing information, concepts, and ideas to an audience of listeners or readers with whom there is no immediate interaction. Examples of this "one-to-many" mode of communication include but are not limited to presenting to a group; creating and posting digital content; or writing reports, compositions, or articles for a magazine or newspaper.

(3) The use of age-level appropriate and culturally authentic resources is imperative to support the teaching of the essential knowledge and skills for languages other than English (LOTE). The use of culturally authentic resources in world language study enables students to make connections with other content areas, to compare the language and culture studied with their own, and to participate in local and global communities.

(4) The student enrolled in a seminar course in a modern or classical language will focus on a specialized area of study such as the work of a particular author, genre, or topic. The student will speak, write, read, and listen, as appropriate, in the target language for a variety of audiences and purposes. The student is expected to plan, draft, and complete written compositions as well as oral presentations on a regular basis and carefully examine his or her papers and presentations for clarity, engaging language, and the correct use of the conventions and mechanics of the target language as applicable.

(5) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) The student inquires through assigned topics and research in the target language. The student is expected to:

(A) generate relevant and researchable questions with instructor guidance and approval;

(B) communicate with accuracy and fluency in order to participate fully and effectively in conversations on a variety of topics in formal and informal settings from multiple perspectives;

(C) comprehend language from within the cultural framework, including the use of nuance and subtlety;

(D) produce formal and informal correspondence on a variety of social, academic, or professional topics;

(E) produce in-depth summaries, reports, or research papers on a variety of social, academic, or professional topics; and

(F) pose relevant questions from the research findings or conclusions for further study.

(2) The student applies critical-thinking skills to build a portfolio that organizes and uses information acquired from a variety of sources, including technology. The student is expected to:

(A) collect a variety of visual images such as photographs, paintings, political cartoons, and other media;

(B) compile written ideas and representations;

(C) interpret information and draw conclusions from a wide range of sources;

- (D) identify bias in written, oral, and visual material;
- (E) use writing and speaking skills for reflection and exploration;
- (F) cite sources appropriately; and
- (G) present a portfolio.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 20, 2014.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 6, 2014

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



## SUBCHAPTER D. OTHER LANGUAGES OTHER THAN ENGLISH COURSES

### 19 TAC §§114.61 - 114.73

The new sections are proposed under the Texas Education Code (TEC), §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, as amended by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the SBOE to determine by rule curriculum requirements for the foundation high school program that are consistent with the required curriculum under TEC, §28.002.

The new sections implement the Texas Education Code, §§7.102(c)(4); 28.002; and 28.025, as amended by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

§114.61. Implementation of Texas Essential Knowledge and Skills for Languages Other Than English Courses.

The provisions of this subchapter shall be implemented by school districts.

§114.62. Advanced Placement (AP) Chinese Language and Culture (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is Chinese, Level III or equivalent proficiency.

(b) Content requirements. Content requirements for Advanced Placement (AP) Chinese Language and Culture are prescribed in the College Board Publication Advanced Placement (AP) Chinese Language and Culture, published by The College Board.

§114.63. Advanced Placement (AP) French Language and Culture (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be

used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is French, Level III or equivalent proficiency.

(b) Content requirements. Content requirements for Advanced Placement (AP) French Language and Culture are prescribed in the College Board Publication Advanced Placement (AP) French Language and Culture, published by The College Board.

§114.64. Advanced Placement (AP) German Language and Culture (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is German, Level III or equivalent proficiency.

(b) Content requirements. Content requirements for Advanced Placement (AP) German Language and Culture are prescribed in the College Board Publication Advanced Placement (AP) German Language and Culture, published by The College Board.

§114.65. Advanced Placement (AP) Italian Language and Culture (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is Italian, Level III or equivalent proficiency.

(b) Content requirements. Content requirements for Advanced Placement (AP) Italian Language and Culture are prescribed in the College Board Publication Advanced Placement (AP) Italian Language and Culture, published by The College Board.

§114.66. Advanced Placement (AP) Japanese Language and Culture (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is Japanese, Level III or equivalent proficiency.

(b) Content requirements. Content requirements for Advanced Placement (AP) Japanese Language and Culture are prescribed in the College Board Publication Advanced Placement (AP) Japanese Language and Culture, published by The College Board.

§114.67. Advanced Placement (AP) Latin (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is Latin, Level III or equivalent proficiency.

(b) Content requirements. Content requirements for Advanced Placement (AP) Latin are prescribed in the College Board Publication Advanced Placement (AP) Latin, published by The College Board.

§114.68. Advanced Placement (AP) Spanish Language and Culture (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is Spanish, Level III or equivalent proficiency.

(b) Content requirements. Content requirements for Advanced Placement (AP) Spanish Language and Culture are prescribed in the College Board Publication Advanced Placement (AP) Spanish Language and Culture, published by The College Board.

§114.69. Advanced Placement (AP) Spanish Literature and Culture (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level V or higher. The prerequisite for this course is AP Spanish Language and Culture or Spanish, Level IV or equivalent proficiency.

(b) Content requirements. Content requirements for Advanced Placement (AP) Spanish Literature and Culture are prescribed in the College Board Publication Advanced Placement (AP) Spanish Literature and Culture, published by The College Board.

§114.70. International Baccalaureate (IB) Language B, Modern Languages, Standard Level (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is Languages Other Than English, Level III, in the corresponding language or equivalent proficiency. Students may take this course with a different target language for a maximum of three credits.

(b) Content requirements. Content requirements for approved IB language courses are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

§114.71. International Baccalaureate (IB) Language B, Modern Languages, Higher Level (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level V or higher. The prerequisite for this course is IB Language B, Standard Level, in the corresponding language. Students may take this course with a different target language for a maximum of three credits.

(b) Content requirements. Content requirements for approved IB language courses are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

§114.72. International Baccalaureate (IB) Classical Languages, Standard Level (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English, Level IV or higher. The prerequisite for this course is Languages Other Than English, Level III, in the corresponding language or equivalent proficiency. Students may take this course with a different target language for a maximum of three credits.

(b) Content requirements. Content requirements for approved IB language courses are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

§114.73. International Baccalaureate (IB) Classical Languages, Higher Level (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course may be used to satisfy a credit requirement for Languages Other Than English,

Level V or higher. The prerequisite for this course is IB Language B, Standard Level, in the corresponding language. Students may take this course with a different target language for a maximum of three credits.

(b) Content requirements. Content requirements for approved IB language courses are prescribed by the International Baccalaureate Organization. Curriculum guides may be obtained from International Baccalaureate of North America.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201400787

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 6, 2014

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

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**TITLE 22. EXAMINING BOARDS**

**PART 9. TEXAS MEDICAL BOARD**

**CHAPTER 187. PROCEDURAL RULES**

**SUBCHAPTER D. FORMAL BOARD**

**PROCEEDINGS**

**22 TAC §§187.35, 187.37, 187.38**

The Texas Medical Board (Board) proposes amendments to §187.35, concerning Presentations of Proposal for Decision; §187.37, concerning Final Decisions and Orders; and §187.38, concerning Motions for Rehearing.

The amendment to §187.35 provides that the administrative law judge (ALJ) must be given notice of the opportunity to provide to the Board a summation of the proposal for decision, that the ALJ is not required to attend the presentation of the proposal for decision, and that notice may be provided to the ALJ by methods that include facsimile, e-mail, and telephone. Further, language is added referencing final orders.

The amendment to §187.37 adds procedural requirements and definitions for "Final Decision" and "Final Order." The amendment further provides that the Board may only seek judicial review of an ALJ's findings and conclusions of law in the form of a Final Decision, that the determination of that appeal is conclusive to both the board and licensee as to the findings of fact and conclusions of law, and that upon resolution of the Board's appeal, the Board shall determine the charges on the merits and issue a Final Order, the sanctions of which may be appealed by the licensee. The amendment further provides that if the board does not seek judicial review of a Final Decision and issues instead a Final Order, the licensee retains the rights under the Administrative Procedure Act to appeal the Final Order's findings of fact, conclusions of law, and the sanctions.

The amendment to §187.38 makes references to "Final Order" and "Final Decision" and makes general edits of other language in order to maintain consistency with proposed amendments under §187.37.

Scott Freshour, General Counsel for the Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed.

Mr. Freshour has also determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are consistent with the statutes and to provide an efficient and fair appeal process for when the Board disagrees with findings made by the State Office of Administrative Hearings that the Board believes are contrary to the weight of the evidence and better ensure the public's safety. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro-businesses.

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

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §164.007(a) - (a-1) of the Texas Occupations Code.

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

*§187.35. Presentation of Proposal for Decision.*

(a) Notice of oral argument. All parties ~~[and the ALJ who has issued a proposal for decision]~~ shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. The ALJ who issued the proposal for decision shall be given notice of the opportunity to attend and provide a summation of the proposal for decision before the board. The ALJ is not required to attend the presentation of the proposal for decision before the board. Notice shall be sent by hand delivery, regular mail, certified mail - return receipt requested, courier service, or registered service to ~~[the ALJ's office and]~~ the parties' addresses of record. Notice to the ALJ may be provided by facsimile, e-mail, telephone, hand delivery, regular mail, certified mail - return receipt requested, courier service, or registered service.

(b) Arguments before the Board. The order of the proceeding shall be as follows:

- (1) the ALJ may ~~[shall]~~ present and explain the proposal for decision;
- (2) the party adversely affected shall briefly state the party's reasons for being so affected supported by the evidence of record;
- (3) the other party or parties shall be given the opportunity to respond;
- (4) the party with the burden of proof shall have the right to close;
- (5) board members may question any party as to any matter relevant to the proposal for decision and evidence presented at the hearing;
- (6) at the end of all arguments by the parties, the board may deliberate in closed session and shall take action on a final decision or final order in open session.

(c) Limitation. A party shall not inquire into the mental processes used by the board in arriving at its decision, nor be disruptive of the orderly procedure of the board's routines.

*§187.37. Final Decisions and Final Orders.*

(a) For purposes of this section a Final Decision is defined as the findings of fact and conclusions of law issued by the ALJ after the filing of exceptions and replies to exceptions, in the form of a proposal for decision. A Final Decision shall include only findings of fact and conclusions of law, separately stated.

(b) For purposes of this section a Final Order is defined as the findings of fact and conclusions of law, separately stated, and the sanctions, if any, issued by the board.

(c) The board shall notify the licensee if it will present a Final Decision or a Final Order when providing the notice required in §187.35 of this title (relating to Presentation of Proposal for Decision).

(d) The determination to present a Final Decision or issue a Final Order rests solely with the board. The board may only appeal a Final Decision.

(e) If a Final Decision is appealed, the determination of that appeal is conclusive to both the board and licensee as to the findings of fact and conclusions of law and only the sanction can subsequently be appealed after the issuance of a Final Order.

(f) If the board issues only a Final Order, the licensee retains the rights under the APA to appeal the findings of fact, conclusions of law, and the sanctions.

(g) ~~[(a)]~~ Board action. A copy of the Final Decision and/or Final Order ~~[final decision or order]~~ shall be delivered or mailed to any party and to the attorney of record.

(h) ~~[(b)]~~ Recorded. All Final Decisions and Final Orders ~~[final decisions and orders]~~ of the board shall be in writing and shall be signed by the president, vice-president, or secretary and reported in the minutes of the meeting. [A final order shall include findings of fact and conclusions of law, separately stated.]

(i) ~~[(e)]~~ Imminent peril. If the board finds that imminent peril to the public's health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(j) ~~[(d)]~~ Changes to findings of fact and conclusions of law. The board may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. The board may, however, obtain judicial review of any findings of fact or conclusions of law as provided by the APA.

~~[(1) Determination and Imposition of Sanctions. The agency is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining physicians and surgeons, physician assistants, and acupuncturists, to ensure that sound medical principles govern the decisions of the board.]~~

~~[(2) Sanctions. Section 164.007(a) requires that, after receiving the ALJ's findings of fact and conclusions of law, the board shall determine the charges on the merits. The board has the sole authority and discretion to determine the appropriate sanction or action to impose on a licensee. The board determination regarding appropriate sanctions shall be based on the ALJ's findings of fact and conclusions~~



of law as set out in the Proposal for Decision, and shall be set out in a Final Order.]

~~(3) In the case where the board intends to seek judicial review of findings of facts, conclusions of law or both, a statement that judicial review will be sought shall be specifically stated in the Final Order. In any case where the board seeks judicial review, that review includes the right of the board to appeal any of its sanctions, including dismissal.]~~

(k) In the case where the board intends to seek judicial review of a Final Decision, the board shall file a motion for rehearing as described in §187.38 of this title (relating to Motions for Rehearing).

(1) Determination and Imposition of Sanctions in a Final Order. The agency is charged by the legislature to protect the public interest, is an independent agency of the executive branch of the government of the State of Texas, and is the primary means of licensing, regulating and disciplining physicians and surgeons, physician assistants, and acupuncturists, to ensure that sound medical principles govern the decisions of the board.

(2) Sanctions. After receiving the ALJ's proposal for decision, the board may enter it as a Final Decision and seek judicial review. Upon the appeal's resolution, the board shall determine the charges on the merits, and issue a Final Order. The board has the sole authority and discretion to determine the appropriate sanction or action to impose on a licensee. The board determination regarding appropriate sanctions shall be based on the findings of fact and conclusions of law as set out in the Proposal for Decision or Final Decision and shall be set out in a Final Order.

(l) [(e)] Administrative finality. A final order or final [board] decision is administratively final:

(1) upon a finding of imminent peril to the public's health, safety or welfare, as outlined in subsection (i) [(e)] of this section;

(2) when no motion for rehearing has been filed within 20 days after the date the final order or board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is denied by board order or operation of law as outlined in §187.38 of this title [(relating to Motions for Rehearing)].

*§187.38. Motions for Rehearing.*

(a) [The board and/or a licensee may obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge.] To obtain judicial review the board and/or a licensee shall file a motion for rehearing.

(b) Filing times. A motion for rehearing may be filed by the board, the Respondent or both. A Motion for Rehearing must be filed with the board within 20 days after a party has been notified, either in person or by mail, of the Final Decision [final decision] or Final Order [order] of the board. For purposes of notification of the Final Decision [final decision] or Final Order [order], the licensee is deemed to have personal notification at the time the board votes on the Final Decision or Final Order [sanctions], if the Respondent or Respondent's attorney is present at the meeting when that vote occurs.

(c) Board action. Board action on the motion must be taken within 45 days after the date of rendition of the Final Decision [final decision] or Final Order [order]. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the Final Decision [final decision] or Final Order [order]. The board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or another suitable means of communication. The board may by written order extend the period of

time for filing the motions and replies and taking board action, except that an extension may not extend the period for board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the Final Decision [final decision] or Final Order [order]. The parties may by agreement with the approval of the board provide for a modification of the times provided in this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400852

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: April 6, 2014

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



## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

#### 22 TAC §§531.1, 531.2, 531.18, 531.19

The Texas Real Estate Commission (TREC) proposes amendments to §531.1, concerning Fidelity; §531.2, concerning Integrity; §531.18, concerning Consumer Information Form 1-1; and §531.19, Discriminatory Practices. The amendments are proposed following a comprehensive rule review for this chapter to better reflect current TREC procedures and to simplify and clarify where needed.

The proposed amendment to §531.1 corrects a typographical error.

The proposed amendment to §531.2 changes the word "licensee's" to "license holder's" to provide consistency of terminology throughout TREC rules.

The proposed amendment to §531.18 removes the specific form number in the title to allow for additional consumer information to be added to the rule in the future, removes a reference to an irrelevant date, corrects a website address, and inserts a clarifying term.

The proposed amendment to §531.19 provides clarity and consistency by restructuring, renumbering, and correcting outdated terminology.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amended sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amended sections. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis 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 amended sections will be improved clarity and consistency of terminology throughout TREC rules.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the TREC to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with those chapters.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code, or article is affected by the proposed amendments.

#### §531.1. *Fidelity.*

A real estate broker or salesperson, while acting as an agent for another, is a fiduciary. Special obligations are imposed when such fiduciary relationships are created. They demand:

(1) that the primary duty of the real estate agent is to represent the interests of the agent's client, and the agent's position, in this respect, should be clear to all parties concerned in a real estate transaction; that, however, the agent, in performing duties to the client, shall treat other parties to a transaction fairly;

(2) that the real estate agent be faithful and observant to trust placed in the agent, and be scrupulous and meticulous in performing the agent's functions; and

(3) that the real estate agent place no personal interest above that of the agent's client.

#### §531.2. *Integrity.*

A real estate broker or salesperson has a special obligation to exercise integrity in the discharge of the license holder's [~~licensee's~~] responsibilities, including employment of prudence and caution so as to avoid misrepresentation, in any wise, by acts of commission or omission.

#### §531.18. *Consumer Information* [~~Form 1-1~~].

(a) The Texas Real Estate Commission adopts by reference Consumer Information Form 1-1 [~~approved by the Texas Real Estate Commission in 1991~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.texas.gov](http://www.trec.texas.gov) [~~www.trec.state.tx.us~~].

(b) Each active real estate inspector or active real estate broker licensed by the Texas Real Estate Commission shall display Consumer Information Form 1-1 in a prominent location in each place of business the broker or inspector maintains.

#### §531.19. *Discriminatory Practices.*

(a) No real estate license holder [~~licensee~~] shall inquire about, respond to or facilitate inquiries about, or make a disclosure of an owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property which indicates or is intended to indicate any preference, limitation, or discrimination based on the following:

(1) race;<sup>[5]</sup>

(2) color;<sup>[5]</sup>

(3) religion;<sup>[5]</sup>

(4) sex;<sup>[5]</sup>

(5) national origin;<sup>[5]</sup>

(6) ancestry;<sup>[5]</sup>

(7) familial status; or; or handicap of an owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property.

(8) disability.

(b) For the purpose of this section, disability [~~handicap~~] includes [~~a person who had, may have had, has, or may have~~] AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the United States Public Health Service.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2014.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



## CHAPTER 533. PRACTICE AND PROCEDURE

The Texas Real Estate Commission proposes amendments to §533.1, concerning Definitions; §533.2, concerning Purpose and Scope; §533.3, concerning Filing and Notice; §533.4, concerning Failure to Answer, Failure to Attend Hearing and Default; §533.5, concerning The Adjudicative Hearing Record; §533.6, concerning Filing of Exceptions and Replies; §533.7, concerning Proposals for Decision; §533.8, concerning Final Orders, Motions for Rehearing, and Emergency Orders; §533.33, concerning Qualifications of Mediators; §533.35, concerning Stipulations; §533.36, concerning Agreements; and §533.40, concerning Negotiated Rulemaking. TREC proposes the repeal of §533.20, concerning Informal Proceedings; §533.30, concerning Alternative Dispute Resolution Policy; §533.31, concerning Referral of Contested Matter for Alternative Dispute Resolution Procedures; §533.34, concerning Commencement of ADR. TREC also proposes new §533.20, concerning ADR Policy; §533.21, concerning Negotiated Settlement; §533.25, concerning Informal Proceedings; and §533.30, concerning Staff Mediation.

The proposed amendment to §533.1 clarifies terminology, corrects a grammatical error, and removes unnecessary definitions.

The proposed amendment to §533.2 restates the purpose and scope of the section more succinctly into one subsection and deletes the discussion regarding State Office of Administrative Hearings (SOAH) jurisdiction, which was edited and moved to §533.3(f).

The proposed amendment to §533.3 moves a reworded §533.4(b) to §533.3(a) as a more logical location for that provision; reorganizes and edits the rest of the section to better reflect current procedures; notes in general where the Administrative

Procedures Act and SOAH's procedural rules are applicable; and clarifies and simplifies the rule for greater understanding.

The proposed amendment to §533.4 provides clarity and consistency by restructuring, renumbering, streamlining wording, and correcting terminology. Subsection (b) was moved to §533.3(a) as a more logical location for that provision.

The proposed amendment to §533.5 retitles the section for better clarity; modifies subsection (a) to more closely track SOAH's rule 1 TAC §155.407 and provides for shared costs when an administrative law judge requires a transcript; corrects grammar; and streamlines wording to better clarity.

The proposed amendment to §533.6 clarifies where an exception or reply is filed and the text is amended for consistency of terminology.

The proposed amendments to §533.7 and §533.8 retitle, restructure, modify and expand these sections to better reflect current TREC procedures and provide greater clarity. Section 533.8(a), (b), (c), and (k) were moved to §533.7 and rewritten.

The proposed amendments to Subchapter C, concerning Alternative Dispute Resolution, retitle, restructure, renumber, modify and expand §533.20 and §§533.30 - 533.37 to better reflect current TREC procedures and provide greater clarity.

The proposed amendment to §533.40 corrects terminology and rule citations.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amended and new sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amended and new sections. There is no anticipated economic cost to persons who are required to comply with the proposal.

Ms. Lewis also has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the amended and new sections will be better understanding of practice and procedure provisions for contested cases and consistency of terminology throughout TREC rules.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

## SUBCHAPTER A. DEFINITIONS

### 22 TAC §533.1

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with those chapters.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§533.1. *Definitions.*

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

(1) ADR--Alternative dispute resolution.

~~{(2) ADR Administrator--The trained coordinator in the commission office designated by the commission to coordinate and oversee the ADR procedures which may include conducting mediations. The ADR Administrator shall serve as a resource for ADR training and shall collect data concerning the effectiveness of the ADR procedures.}~~

(2) ~~{(3) Administrator--The Administrator of the Texas Real Estate Commission.~~

~~{(4) ALJ--Administrative law judge employed by the State Office of Administrative Hearings.}~~

(3) ~~{(5) ADR [Alternative Dispute Resolution (ADR)] Procedures--Alternatives to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third-party.~~

(4) ~~{(6) APA--The Administrative Procedure Act (Texas Government Code, Chapter 2001).~~

(5) ~~{(7) Applicant--Any person seeking a license, certificate, registration, approval or permit from the Commission [commission].}~~

(6) ~~{(8) Commission--The Texas Real Estate Commission.~~

(7) ~~{(9) Complainant--Any person who has filed a complaint with the Commission [commission] against any person whose activities are subject to the jurisdiction of the Commission [commission].}~~

(8) ~~{(10) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Commission [commission] and/or Administrator [administrator] after an opportunity for adjudicative hearing.~~

~~{(11) Final decision maker--The commission and/or the administrator, both of whom are authorized to render the final decision in a contested case.}~~

~~{(12) Judge--Administrative law judge employed by the State Office of Administrative Hearings.}~~

(9) ~~{(13) Mailing Address--The mailing address as provided to the Commission [commission] by a license holder [Licensee] and maintained as required by the Commission's rules [22 TAC §535.96 and §535.217 of this title (relating to Mailing Address or Other Contact Information)] or as provided to the Commission [commission] by an Applicant or as shown in the Commission's [commission's] records for a Respondent who is not a license holder. The mailing address for a Respondent that holds an active salesperson license shall be the mailing address of the salesperson's sponsoring broker as shown in the Commission's [commission's] records.~~

(10) ~~{(14) License--The whole or part of any [commission] registration, license, certificate, approval, permit, or similar form of permission required or permitted by law issued by the Commission.~~

~~{(15) Mediator--The commission employee or other state employee who presides over ADR proceedings regardless of which ADR method is utilized.}~~

(11) ~~{(16) Party--A person admitted to participate in a case before the Commission or the Administrator [final decision maker].}~~

(12) [(17)] Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(13) [(18)] Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

[(19) Private Mediator--A person in the mediation profession who is not a Texas State employee and who has met all the qualifications prescribed by Texas law for mediators.]

(14) [(20)] Respondent--Any person, licensed or unlicensed, who has been charged with violating a law that establishes [establishing] a regulatory program administered by the Commission [commission] or a rule or order issued by the Commission [commission].

(15) Sanctions--Any administrative penalty, disciplinary or remedial action imposed by the Commission for violations of Texas Occupations Code, Chapter 1101, 1102, or 1105 or the Rules adopted by the Commission pursuant to those chapters.

[(21) Rule--Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission and is filed with the Texas Register.]

(16) [(22)] SOAH--State Office of Administrative Hearings.

(17) TAC--Texas Administrative Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201400858

Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3604



## SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

### 22 TAC §§533.2 - 533.8

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with those chapters.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

#### §533.2. Purpose and Scope.

This subchapter provides for an efficient and uniform system of practice and procedure before the Commission. This subchapter governs

the institution, conduct, and determination of adjudicative proceedings required or permitted by law, whether instituted by the Commission or by the filing of an application, claim, complaint, or any other pleading. This subchapter does not enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Commission, the Administrator, or the substantive rights of any person or agency.

[(a) Purpose: Unless otherwise provided by statute or by the provisions of this subchapter, this subchapter will govern the institution and final conclusion of proceedings followed in handling all adjudicative matters under the APA. Once the commission files the Request to Docket Case form with SOAH, SOAH acquires jurisdiction over a contested case, and a hearing conducted by SOAH on a contested case proceeding pending before the commission is governed by SOAH's rules of procedure. In the case of a conflict with rules in this chapter, SOAH's rules; † TAC Chapter 155; control after the filing of the Request to Docket Case form and until after final amendments or corrections to the proposal for decision.]

[(b) Scope: These rules govern the institution, conduct, and determination of adjudicative proceedings required or permitted by law, whether instituted by the commission or by the filing of an application, claim, complaint, or any other pleading. These rules shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the administrator, or the substantive rights of any person or agency.]

#### §533.3. Filing and Notice.

(a) If the Commission denies an application for a license, the Commission shall send the applicant written notice of the denial. After receiving notice from the Commission of the denial of an application, an applicant may accept the denial or make a written request for a hearing on that denial. If an applicant fails to request a hearing in writing not later than the 20th day after receipt of notice denying an application, the Commission's denial is final.

(b) If after investigation of the facts surrounding that possible violation the Commission determines that a violation has occurred, the Commission may issue a written Notice of Alleged Violation to the Respondent.

(1) be sent to the Respondent's mailing address by certified or registered mail; and

(2) include:

(A) a brief summary of each alleged violation;

(B) a statement of the sanctions recommended;

(C) a statement of the right of the Respondent to a hearing; and

(D) a notice that failure to answer will result in a default order against Respondent.

[(a) The commission shall provide notice to all parties in accordance with the APA §2001.052, Chapters 1101 and 1102, Texas Occupations Code, and the following:]

[(1) If, after investigation of a possible violation and the facts surrounding that possible violation, the commission determines that a violation has occurred, the commission may issue a written Notice of Alleged Violation.]

[(2) The Notice of Alleged Violation shall be sent to the Respondent's mailing address by certified or registered mail.]

[(3) The Notice of Alleged Violation shall include:]

[(A) a brief summary of the alleged violation(s);]

{(B) a statement of the amount of the penalty and/or sanction recommended; and}

{(C) a statement of the right of the Respondent to a hearing.}

{(4) The commission shall base the recommendation on the factors set forth in this chapter.}

(c) [(b)] Not later than the 20th day after the date on which the Notice of Alleged Violation [notice] is received, the Respondent may:

(1) accept the determination of the Commission [commission], including sanctions recommended by the Commission; [the recommended penalty and/or sanction.} or

(2) make a written request for a hearing on that determination.

(d) The Commission shall provide notice in accordance with the APA and Texas Occupations Code, Chapters 1101 and 1102.

(e) Upon receipt of a written request for hearing, the Commission shall submit a request to docket case to SOAH accompanied by copies of relevant documents giving rise to a contested case.

(f) When the Commission submits a request to docket case with SOAH, SOAH acquires jurisdiction over a contested case until SOAH issues final amendments or corrections to the Proposal for Decision. In case of a conflict with the Commission's rules, SOAH's rules control while SOAH has jurisdiction.

(g) Pleadings, other documents, and service to SOAH shall be filed in accordance with SOAH's rules.

{(e) Upon receipt of a written request for hearing, the commission shall submit a Request for Docket Case form to SOAH accompanied by legible copies of all pertinent documents, including but not limited to the Notice of Hearing or other document describing the agency action giving rise to a contested case. In accordance with 4 TAC §155.53 (relating to Request to Docket Case), the commission shall request one or more of the following actions on the Request to Docket Case form:}

{(1) Setting of hearing;}

{(2) Assignment of an administrative law judge; and/or}

{(3) Setting of alternative dispute resolution proceeding, including but not limited to mediated settlement conference, mediation, or arbitration.}

{(d) The original of all pleadings and other documents requesting action or relief in a contested case, shall be filed with SOAH once it acquires jurisdiction. Pleadings, other documents, and service to SOAH shall be directed to: Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P.O. Box 13025, Austin, Texas 78711-3025. The time and date of filing shall be determined by the file stamp affixed by SOAH. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed. Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the commission's administrator and/or commission as well as the commission's Standards and Enforcement Services Division, P.O. Box 12188, Austin, Texas 78711; or by facsimile at (512) 936-3809. Filings may be made until 5:00 p.m. on business days. Copies shall be filed with SOAH.}

(h) [(e)] If a real estate salesperson is a Respondent, the Commission [commission also] will notify the salesperson's sponsoring broker of the hearing. [Such notice need not be provided by

certified or registered mail.] If an apprentice inspector or real estate inspector is a Respondent, the Commission [commission also] will notify the sponsoring professional inspector of the hearing. Notice under this subsection need not be provided by certified or registered mail.

(i) [(f)] Any document served upon a party is prima facie evidence of receipt, if it is directed to the party's mailing address. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery.

§533.4. *Failure to Answer, Failure to Attend Hearing and Default.*

(a) If, not later than the 20th day [within twenty days] after receiving a Notice of Alleged Violation, the Respondent fails to accept the Commission's [commission's] determination and recommended sanctions [administrative penalty and/or sanction], or fails to make a written request for a hearing on the determination, the Commission [commission] shall enter a default order against the Respondent, incorporating the findings of fact and conclusions of law in the Notice of Alleged Violation, which shall be deemed admitted.

(b) The Commission may delegate to the Administrator the Commission's authority to act under Texas Occupations Code, §1101.704(b) and subsection (a) of this section.

{(b) After receiving a notice proposing disapproval of an application an Applicant may request a hearing in writing within twenty days of receipt of the notice or forfeit the right to a hearing unless otherwise provided by applicable law.}

{(e) The commission may delegate to the administrator the commission's authority to act under Texas Occupations Code §1101.704(b) and subsection (a) of this section.}

(c) [(d)] SOAH rules [4 TAC §155.501 and §155.503 (relating to Default Proceedings and Dismissal Proceedings)] (SOAH rules) apply when [where] a Respondent or Applicant fails to appear on the day and time set for administrative hearing. In that case, the Commission's [commission's] staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default Proposal for Decision [proposal for decision] by the administrative law judge. If the administrative law judge issues an order dismissing the case from the SOAH docket or issues a default Proposal for Decision [proposal for decision], the factual allegations against the Respondent or Applicant filed at SOAH are [shall be deemed] admitted and the Commission [commission] shall enter a default order against the Respondent or Applicant as set out in the Notice of Hearing sent to the Respondent or Applicant. No additional proof is required to be submitted to the Commission [commission] before the Commission [commission] enters the final order.

§533.5. *Transcript Cost [The Adjudicative Hearing Record].*

(a) Cost of a transcript of a SOAH proceeding ordered by a party are paid by that party. Cost of a transcript of a SOAH proceeding ordered by the administrative law judge are split equally between the parties.

(b) A party or witness who needs an interpreter or translator is responsible for making the request under SOAH rules. The cost of the interpreter or translator is borne by the party requesting the service.

{(a) On the written request by a party to a case or on request of the judge, a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This section does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. If only the judge requests a transcript, costs will be assessed to the Respondent(s) or Applicant(s), as appropriate.}

~~[(b) Any party who needs a certified language interpreter for presentation of its case shall be responsible for requesting the services of an interpreter. The requesting party shall be responsible for making arrangements with a certified language interpreter once a request is made. The cost of the certified language interpreter shall be borne by the party requiring the interpreter's services.]~~

~~§533.6. Filing of Exceptions and Replies.~~

~~(a) Any party of record who is adversely affected by the Proposal for Decision [proposal for decision] of the administrative law judge may [shall have the opportunity to] file exceptions [and a brief] to the Proposal for Decision in accordance with SOAH's rules [proposal for decision within 15 days after the date of service of the proposal for decision].~~

~~(b) Exceptions and replies are filed with SOAH with a copy served on the opposing party. The Proposal for Decision may be amended by the administrative law judge pursuant to the exceptions and replies submitted by the parties.~~

~~[(b) A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions.]~~

~~[(c) Exceptions and replies shall be filed with the judge with copies served on the opposing party. The proposal for decision may be amended by the judge pursuant to the exceptions, replies, or briefs submitted by the parties without again being served on the parties.]~~

~~§533.7. Final Decisions and Orders [Proposals for Decision].~~

~~(a) After a Proposal for Decision has been issued by an administrative law judge, the Commission will [Proposal for decision shall be brought before the commission for final decision. The commission shall] render the final decision in a contested case or remand the proceeding for further consideration by the administrative law judge. The Commission [and] is responsible for imposing disciplinary action and/or assessing administrative penalties against Respondents who are found to have violated any of the Commission's statutes [commission's laws] or rules. The Commission [commission] welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the Commission [commission] is not required to give presumptively binding effect to the administrative law judges' recommendations and is not bound by such recommendations.~~

~~(b) If the Commission remands the case to the administrative law judge, the Commission may direct that further consideration be accomplished with or without reopening the hearing and may limit the issues to be considered. If, on remand, additional evidence is admitted that results in a substantial revision of the Proposal for Decision, or the underlying facts, the administrative law judge shall prepare an amended or supplemental Proposal for Decision and this subchapter applies. Exceptions and replies are limited to items contained in the supplemental Proposal for Decision.~~

~~(c) [(b)] The Proposal for Decision [proposal for decision] may be acted on by the Commission [commission] after the administrative law judge has ruled on any exceptions or replies to exceptions [expiration of 10 days after the filing of replies to exceptions to the proposal for decision] or on [upon] the day following the day exceptions or replies to exceptions were [are] due if no such exceptions or replies were [are] filed.~~

~~(d) Any party may request oral argument before the Commission before the final disposition of the contested case. An oral argument is conducted in accordance with paragraphs (1) - (5) of this subsection.~~

~~(1) The chairperson or the Commission member designated by the chairperson to preside (the presiding member) shall~~

announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments presented by the parties.

(2) The hearing on the Proposal for Decision is limited to the record. New evidence may not be presented on the substance of the case unless the party submitting the evidence establishes that the new evidence was not reasonably available at the time of the original hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting an oral argument, the party bearing the burden of proof opens and closes. The party responding may offer a rebuttal argument. A party may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Commission may ask questions of the parties. If a party is represented by counsel, the Commission must direct the questions to the party's attorney. Questions must be limited to the record and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Commission, and any discussion by the member of the Commission, the presiding member shall call for a motion regarding disposition of the contested case. The presiding member may vote on the motion. A motion is granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(e) [(e)] It is the policy of the Commission [commission] to change a finding of fact or conclusion of law in a Proposal for Decision [proposal for decision] of an administrative law [a] judge when[,] the Commission [commission] determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(f) If the Commission modifies, amends, or changes a finding of fact or conclusion of law in a Proposal for Decision, the order shall reflect the Commission's changes as stated in the record of the meeting and state the specific reason and legal basis for the changes. If the Commission does not follow the recommended sanctions in a Proposal for Decision, the order shall explain why the Commission chose not to follow the recommendation as stated in the record of the meeting.

(g) Final orders on contested cases shall be in writing and signed by the presiding officer of the Commission. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed. Parties will be notified either personally or by mail of any decision and will be given a copy of the decision. A party notified by mail of a final decision or order is presumed to have been notified on the third day after the date on which the notice is mailed.

(h) If the Commission or the Administrator find that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed. The decision or order is then final and

appealable on the date signed and a motion for rehearing is not required as a prerequisite for appeal.

(i) Conflict of Interest. A Commission member shall recuse himself or herself from all deliberations and votes regarding any matter:

(1) the member reviewed during an Informal Proceeding;

(2) involving persons or transactions about which the member has a conflict of interest; or

(3) involving persons or transactions related to the member sufficiently closely as to create the appearance of a conflict of interest.

§533.8. Motions for Rehearing; Finality of Decisions [Final Orders, Motions for Rehearing, and Emergency Orders].

(a) The timely filing of a motion for rehearing is a prerequisite to appeal. A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date the order overrules a motion for rehearing, or on the date the motion for rehearing is overruled by operation of law.

~~[(a) Unless otherwise authorized under subsection (f) of this section, a final order in a contested case shall be in writing and shall be signed by the presiding officer of the commission. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed.]~~

~~[(b) If the commission modifies, amends, or changes a finding of fact or conclusion of law in a proposal for decision, the order shall reflect the commission's changes as stated in the record of the meeting and state the specific reason and legal basis for the changes made according to §533.7(e) of this chapter (relating to Proposals for Decision). If the commission does not follow the recommended disciplinary action and/or administrative penalty in a proposal for decision, the order shall explain why the commission chose not to follow the recommendation as stated in the record of the meeting.]~~

~~[(c) A party notified by mail of a final decision or order shall be presumed to have been notified on the third day after the date on which the notice is mailed.]~~

~~[(d) The timely filing of a motion for rehearing is a prerequisite to appeal.]~~

~~[(e) Motions for rehearing are controlled by Texas Government Code, §§2001.145 - 2001.147 [§2001.145 and §2001.146] and this section.~~

~~[(f) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error, such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commission [commission] shall presume that the motion should be overruled.~~

~~[(g) Any party may request oral arguments before the Commission prior to the final disposition of the motion for rehearing. Oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.~~

~~[(h) The chairperson or the member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.~~

~~[(i) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence, such as excerpts of the record before the presiding officer, may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing, or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.~~

~~[(j) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal, subject to the discretion of the presiding member.~~

~~[(k) After being recognized by the presiding member, the members of the Commission [commission] may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.~~

~~[(l) Upon the conclusion of oral arguments, questions by the members of the Commission [commission], and any discussion by the member of the Commission [commission], the presiding member shall call for a vote on the motion. A member of the Commission [commission] need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.~~

~~[(m) If the commission and/or the administrator find that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed, in which event the decision or order is final and appealable on the date signed and no motion for rehearing is required as a prerequisite for appeal.]~~

~~[(n) A petition for judicial review must be filed in a District Court of Travis County Texas within 30 days after the order is final and appealable, as provided by Texas Government Code, Title 10, Subtitle A, Chapter 2001. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.~~

~~[(o) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.~~

~~[(p) If, after judicial review, the administrative penalty is reduced or not assessed, the Administrator [administrator] shall remit to the person charged the appropriate amount, plus accrued interest if the administrative penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the Administrator [administrator] under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed administrative penalty is paid to the Commission [commission] and ending on the date the administrative penalty is remitted.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3604



## SUBCHAPTER C. ALTERNATIVE DISPUTE RESOLUTION

### 22 TAC §§533.20, 533.30, 533.31, 533.34

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

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with those chapters.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by this proposal.

§533.20. *Informal Proceedings.*

§533.30. *Alternative Dispute Resolution Policy.*

§533.31. *Referral of Contested Matter for Alternative Dispute Resolution Procedures.*

§533.34. *Commencement of ADR.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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### 22 TAC §§533.20, 533.21, 533.25, 533.30, 533.33, 533.35, 533.36

The new sections and amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards

of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with those chapters.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by this proposal.

§533.20. *ADR Policy.*

It is the Commission's policy to encourage the fair and expeditious resolution of all contested matters through voluntary settlement procedures. The Commission is committed to working with all parties to achieve early settlement of contested matters and encourages resolution of disputes at any time.

§533.21. *Negotiated Settlement.*

(a) Commission staff and Respondent or Applicant may enter into a settlement agreement following negotiations at any time.

(b) Negotiations may be conducted in person, by phone, or through any form of written communication.

§533.25. *Informal Proceedings.*

(a) Informal disposition of any contested case involving a respondent may be made through an informal conference pursuant to Texas Occupations Code, §1101.660.

(b) A respondent may request an informal conference; however, the decision to hold a conference shall be made by the Director of Standards and Enforcement Services.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) An informal conference may be conducted in person, or by electronic, telephonic, or written communication.

(e) The Director of Standards and Enforcement Services or the director's designee shall decide upon the time, date and place of the informal conference, and provide written notice to the respondent. Notice shall be provided by certified mail no less than ten days prior to the date of the conference to the last known mailing address of the respondent. The ten days shall begin on the date of mailing. The respondent may waive the ten-day notice requirement.

(f) A copy of the Commission's rules concerning informal conferences shall be enclosed with the notice of the informal conference. The notice shall inform the respondent of the following:

(1) that the respondent may be represented by legal counsel;

(2) that the respondent may offer documentary evidence as may be appropriate;

(3) that at least one public member of the Commission shall be present;

(4) that two staff members, including the staff attorney assigned to the case, with experience in the regulatory area that is the subject of the proceedings shall be present;

(5) that the respondent's attendance and participation is voluntary; and

(6) that the complainant involved in the alleged violations may be present.

(g) The notice of the informal conference shall be sent to the complainant at his or her last known mailing address. The complainant shall be informed that he or she may appear in person or may submit a written statement for consideration at the informal conference.



(h) The conference shall be informal and need not follow the procedures established in this chapter for contested cases and formal hearings.

(i) The respondent, the respondent's attorney, the Commission member, and the staff members may question the respondent or complainant, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The staff attorney assigned to the case shall attend each informal conference. The Commission member or other staff member may call upon the attorney at any time for assistance in the informal conference.

(k) No formal record of the proceedings of the informal conference shall be made or maintained.

(l) The complainant may be excluded from the informal conference except during the complainant's oral presentation. The respondent, the respondent's attorney, and Commission staff may remain for all portions of the informal conference, except for consultation between the Commission member and Commission staff.

(m) The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(n) At the conclusion of the informal conference, the Commission member or staff members may propose an informal settlement of the contested case. The proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The Commission member or staff members may also recommend that no further action be taken.

(o) The respondent may either accept or reject the proposed settlement recommendations at the conference. If the proposed settlement recommendations are accepted, a proposed agreed order shall be prepared by the staff attorney and forwarded to the respondent. The order shall contain agreed findings of fact and conclusions of law. The respondent shall execute the proposed agreed order and return the executed order to the Commission not later than the 10th day after his or her receipt of the proposed agreed order. If respondent fails to sign and return the executed proposed agreed order within the stated time period, the inaction shall constitute rejection of the proposed settlement recommendation.

(p) If the respondent rejects the proposed settlement recommendation, the matter shall be referred to the Director of Standards and Enforcement Services for appropriate action.

(q) If the respondent signs and accepts the proposed agreed order, it shall be signed by the staff attorney and submitted to the Administrator for approval.

(r) If the Administrator does not approve a proposed agreed order, the respondent shall be so informed and the matter shall be referred to the Director of Standards and Enforcement Services for other appropriate action.

(s) A license holder's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(t) The Commission may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal conference instead of or in addition to imposing an administrative penalty pursuant to Texas Occupations Code, §1101.659. The amount of a refund ordered as provided in an agreement resulting from an in-

formal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The Commission may not require payment of other damages or estimate harm in a refund order.

§533.30. Staff Mediation.

(a) Commission staff, who have received a minimum of 40 hours of formal mediation training, may mediate a resolution of a complaint between the Commission, a Respondent, and a complainant upon agreement of all parties.

(b) After receipt of a complaint that meets the requirements to be investigated under Texas Occupations Code, §1101.204(b), Commission staff may refer a complaint for mediation to a Commission staff mediator.

(c) Mediation under this section is voluntary.

(d) If an agreed resolution between the Commission, a Respondent, and a complainant cannot be reached, the Commission staff mediator will not have any further involvement with the continued investigation or resolution of the complaint.

§533.33. Outside Mediation [Qualifications of Mediators].

(a) At the discretion of the Director of Standards and Enforcement Services and with the consent of all parties, mediation with an outside mediator may be scheduled between the Commission and a Respondent or Applicant when the Commission anticipates initiation of an adverse action against a Respondent or Applicant or any time after initiation.

~~{(a) A commission mediator will receive at a minimum 40 hours of formal training in ADR procedures through a program approved by the commission's administrator.}~~

(b) SOAH mediators, employees of other agencies who are mediators, and private pro bono mediators, may be assigned to contested matters as needed.

~~[(1)] Each such mediator shall: [first]~~

~~(1) have received at least 40 hours of Texas mediation training; and [as prescribed by Texas law.]~~

~~(2) [Each mediator shall] have some expertise in the area of the contested matter.~~

~~(c) [(3)] If the mediator is a SOAH judge, that person will not also sit as the administrative law judge for the case if the contested matter goes to a SOAH [public] hearing. [If the mediator is an employee of the commission and dispute does not settle, that mediator will not have any further contact or involvement concerning the disputed matter.]~~

(d) Upon unanimous motion of the parties and at the discretion of the administrative law judge, this section applies to a case referred to SOAH.

(e) Respondents or Applicants participating in a mediation will pay one-half of any fees incurred for the mediation directly to the Commission before mediation begins.

§533.35. Stipulations.

When the ADR procedures do not result in the full settlement of a matter, the parties in conjunction with the mediator, if applicable, may limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the administrative law judge assigned to conduct the contested case hearing on the merits and shall be made part of the hearing record.

§533.36. Agreements.

All agreements between or among parties that are reached as a result of ADR must be committed to writing, signed by Respondents or Applicants and a Commission staff attorney and submitted to the Commission or Administrator for approval. Once signed by the Commission or Administrator the agreement [and] will have the same force and effect as a written contract.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3604



## SUBCHAPTER D. NEGOTIATED RULEMAKING

### 22 TAC §533.40

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with those chapters.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by this proposal.

#### §533.40. *Negotiated Rulemaking.*

(a) It is the Commission's [eommission's] policy to employ negotiated rulemaking procedures when appropriate. When the Commission [eommission] is of the opinion that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking will be considered.

(b) When negotiated rulemaking is to be considered, the Commission [eommission] will appoint a convener to assist it in determining whether it is advisable to proceed. The convener shall have the duties described by Texas Government Code, §2008.052, [in Texas Government Code, Chapter 2008], and shall make a recommendation to the Administrator [administrator] to proceed or to defer negotiated rulemaking. The recommendation shall be made after the convener, at a minimum, has considered all of the items enumerated in Texas Government Code, §2008.052(c).

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400862

Kerri Lewis

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 936-3604



## CHAPTER 534. GENERAL ADMINISTRATION

### 22 TAC §§534.1 - 534.7

The Texas Real Estate Commission (TREC) proposes amendments to §534.1, concerning Charges for Copies of Public Information; §534.2, concerning Processing Fees for Dishonored Payments; §534.3, concerning Employee Training and Education; §534.4, concerning Historically Underutilized Businesses Program; §534.5, concerning Bid Opening and Tabulation; §534.6, concerning Negotiation and Mediation of Certain Contract Disputes; and §534.7, concerning Vendor Protest Procedures. The amendments are proposed following a comprehensive rule review for this chapter to better reflect current TREC procedures and to simplify and clarify where needed.

The proposed amendment to §534.1 provides greater clarity and consistency of terminology throughout TREC rules.

The proposed amendment to §534.2 provides consistency of terminology throughout TREC rules.

The proposed amendment to §534.3 corrects a statutory cite and provides consistency of terminology throughout TREC rules.

The proposed amendments to §§534.4 - 535.6 standardize the format of citations for consistency.

The proposed amendment to §534.7 standardizes the format of citations for consistency, corrects a rule citation, and provides consistency of terminology throughout TREC rules.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amended sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amended sections. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis 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 amended sections will be improved clarity and consistency of terminology used throughout TREC rules.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the TREC to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with those chapters.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code, or article is affected by the proposed amendments.

*§534.1. Charges for Copies of Public Information.*

(a) Any charges associated with [Charge for] copies of public information provided by the Commission [eommission] shall be based upon the current charges established by the Office of the Attorney General. [; provided, however, that the commission shall charge its actual costs if]

(b) If the actual costs of providing copies exceed the [established] charges established by the Office of the Attorney General, the Commission shall charge its actual costs, if approved by[, and an exemption has been granted by] the Office of the Attorney General.

(c) [(b)] The Commission [eommission] may furnish copies of public information without charge, or at a reduced charge, if the Commission [eommission] determines that waiver or reduction of the charge [fee] is in the public interest. The Commission [eommission] also may waive the charge if the cost of processing the collection of a charge exceeds [will exceed] the amount of the charge.

*§534.2. Processing Fees for Dishonored Payments.*

(a) If a payment to the Commission [eommission] is dishonored by a bank or depository for insufficient funds [payer], the Commission [eommission] shall charge the fee to the drawer or endorser for processing the dishonored payment required by §535.101(b)(23) of this title (relating to Fees). The Commission [eommission] shall notify the drawer or endorser of the fee by sending a request for payment of the dishonored payment and the processing fee by certified mail to the last known mailing address of the person as shown in the records of the Commission [eommission]. If the Commission [eommission] has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the Commission [eommission] has mailed the request is a violation of this section.

(b) Collection of the fee imposed under this section does not preclude the Commission [eommission] from proceeding under Texas Occupations Code, §1101.652(a)(4), against a license holder [licensee] who has [within a reasonable time] failed to make good a payment issued to the Commission within a reasonable time [eommission].

*§534.3. Employee Training and Education.*

(a) The Commission [eommission] may use state funds to provide training and education for its employees in accordance with the State Employees Training Act (Texas Government Code, §§656.041 [§§656.044] - 656.049).

(b) The training or education shall be related to the duties or prospective duties of the employee.

(c) The Commission's [eommission's] training and education program benefits both the Commission [eommission] and the employees participating by:

- (1) preparing for technological and legal developments;
- (2) increasing work capabilities;
- (3) increasing the number of qualified employees in areas for which the Commission [eommission] has difficulty in recruiting and retaining employees; and
- (4) increasing the competence of Commission [eommission] employees.

(d) A Commission [eommission] employee may be required to attend, as part of the employee's duties, a training or education program related to the employee's duties or prospective duties.

(e) Approval to participate in a training or education program is not automatic and is subject to the availability of funds within the Commission's [eommission's] budget.

(f) The employee training and education program for the Commission [eommission] shall include:

- (1) agency-sponsored training provided in-house or by contract;
- (2) seminars and conferences;
- (3) technical or professional certifications and licenses; and
- (4) tuition reimbursement for degree and non-degree program courses.

(g) The Administrator [administrator] or Administrator's [administrator's] designee shall develop policies for administering each of the components of the employee training and education program. These policies shall include:

- (1) eligibility requirements for participation;
- (2) designation of appropriate level of approval for participation; and
- (3) obligations of program participants.

(h) Approval to participate in any portion of the Commission's [eommission's] training and education program shall not in any way affect an employee's at-will status.

(i) Participation in the training and education program shall not in any way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

*§534.4. Historically Underutilized Businesses Program.*

To comply [In accordance] with Texas Government Code §2161.003, the Commission [eommission] adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B[;] (relating to the Historically Underutilized Business Program). [The Comptroller of Public Accounts rules are located at the Office of the Secretary of State's internet website: [www.sos.state.tx.us/tac/index.html](http://www.sos.state.tx.us/tac/index.html).]

*§534.5. Bid Opening and Tabulation.*

[(a)] To comply with Texas Government Code, §2156.005(d), the Commission [The eommission] adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC §20.35 (relating to Bid Submission, Bid Opening, and Tabulation) [relating to bid submission, bid opening, and tabulation].

[(b) The adoption of this rule is required by Texas Government Code, §2156.005(d).]

*§534.6. Negotiation and Mediation of Certain Contract Disputes.*

To comply with Texas Government Code, §2260.052(c), the Commission [The eommission] adopts by reference the rules of the Office of the Attorney General in 1 TAC Part 3 [Title 1, Part 3, Texas Administrative Code], Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes) [to comply with the requirements of Texas Government Code, Chapter 2260, §2260.052(e)]. The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

*§534.7. Vendor Protest Procedures.*

(a) To comply with Texas Government Code, §2155.076(a), the Commission [The eommission] adopts by reference the rules of

[promulgated by] the Texas Facilities [Building and Procurement] Commission regarding purchasing protest procedures as set forth in [Subchapter A of] 1 TAC §111.32 (relating to Protests/Dispute Resolution/Hearing) [§111-3].

(b) The Commission [commission] shall maintain documentation about the purchasing process to be used in the event of a protest by maintaining current information regarding applicable statutory law, administrative rules, and guidelines affecting the purchasing process.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES**

##### **SUBCHAPTER C. VISION AND HEARING SCREENING**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §37.21 and §37.22, new §§37.23 - 37.28, and the repeal of §§37.23 - 37.39, concerning vision and hearing screening services.

##### **BACKGROUND AND PURPOSE**

The department administers the state Vision and Hearing Screening Program, which is designed to identify individuals from birth through 20 years of age with special senses and communication disorders and who may need remedial vision, hearing, speech, and/or language services. Vision and hearing screenings are required for individuals who attend a "facility" (i.e., public or private preschools and schools, licensed child care centers and licensed child care homes). The facilities ensure that enrolled individuals comply with the screening requirements of this subchapter. Department rules cover appropriate standards for the screenings at issue. The program trains and certifies individuals to conduct vision and hearing screenings. The program also trains instructors who themselves then conduct screening training sessions all over the state and issue certificates for individuals to conduct screenings. An essential element of screening training is teaching the screener to make referrals for professional examinations based on screening results.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that

agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.21 - 37.39 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to effectively administer the program. Needed revisions to the rules are detailed herein.

The proposed amendments are necessary to: (1) update, clarify, and restructure sections in order to make them current, provide for consistent terminology, and to improve their readability and user-friendliness; (2) allow the appropriate use of new technology for vision screening; (3) repeal language related to Radiation Control to better reflect Texas statutes; and (4) incorporate almost all of the most-recent version of national screening standards. As part of the improvement and reorganization related to the four-year review of these rules, the department is placing the content of the repealed sections in a more logical organization in the amended and new sections of this proposal.

##### **SECTION-BY-SECTION SUMMARY**

The proposed amendments to §37.21 would give the complete name of the referenced statute and would also delete the cross-reference to Health and Safety Code, Chapter 401, concerning radioactive materials and other sources of radiation, because there is no reasonable use of an audiometer that could cause harm and thus these rules are not covered by Texas radiation law.

The proposed amendments to §37.22 represent an update of the subchapter's definitions section and would also introduce new terminology used in other rule sections proposed for amendment in this rulemaking action. Renumbering is proposed throughout, consistent with the proposed changes to the section. A new term and definition are proposed at paragraph (1) to define the American Association for Pediatric Ophthalmology and Strabismus, an organization that issues recommendations which act as the national standards, which states may reference in their state regulations. Current definition in paragraph (1), "Act," is proposed for deletion to better reflect the underlying statutory authority of these rules, as detailed previously. The word "voluntary" is proposed for deletion in paragraph (2) to prevent confusion, since the rules in this subchapter already make certain American National Standards Institute, Inc. (ANSI) standards mandatory, as specified in these rules. Proposed amendments to paragraph (4) would clarify what the term "audiometric calibration equipment" encompasses. Proposed amendments to paragraph (6) spell out the word "decibel," when initially used, and introduce its abbreviation, "dB." Other amendments to paragraph (6) correct the capitalization of the term "Hertz" and provide the term's abbreviation. An amendment proposed at paragraph (7) would provide additional language at the end of the definition to emphasize that calibration must be done in accordance with applicable legal requirements. Proposed amendments to paragraph (8) update the name of the agency and provide the term "department" for subsequent use in the proposed rule revisions. Other amendments to this subsection help provide consistent language regarding individuals who conduct screenings and individuals who provide screening training. A final proposed amendment to paragraph (8) clarifies the definition through the use of the plural "procedures." The proposed amendments to paragraph (9) give the abbreviation of the term "decibel" as it has previously been used in these proposed rules. The proposed amendments to paragraph (9) also improve clarity and readability. An amendment to paragraph (10) is the deletion of the term "department" because the term has already been defined

and the current rule language is outdated. Current paragraph (12) is proposed to revise the definition of the term, "extended recheck," to improve its clarity and provide more information regarding the option that is available to the individual conducting a hearing screening if a child fails two sweep-check screens. A proposed amendment to current paragraph (13) is a statutory cross-reference for the definitions of the terms "schools" and "preschools," in order to avoid the impression that the regulatory definitions are different from the statutory definitions. Other proposed amendments to the paragraph introduce the acronym for the referenced state agency name. The amendments to current paragraph (14) would provide the acronym "Hz" for the term "Hertz" since it has previously been provided when the term was first mentioned; and would provide changes designed to improve readability. Proposed amendments to current paragraph (15) would clarify the scope of practice of a licensed professional as it pertains to vision and hearing screening, consistent with Texas Health and Safety Code, Chapter 36. Proposed new paragraph (15) introduces a new term, "pass/fail" to these proposed rules. The definition for the new term describes the allowable method for documenting results when conducting vision screening through photoscreening. Proposed new paragraph (16) would introduce the term "photoscreening" to these proposed rules. The amendment would define this optional vision screening method, which would be allowed in certain circumstances under these proposed rule amendments. The introduction of this new optional method is allowable because under Texas Health and Safety Code, §36.004, the department may determine appropriate screening equipment when it writes rules to implement the program. A proposed amendment to current paragraph (16) would revise language to more closely reflect the applicable legal authority at Health and Safety Code, §36.003(4) as it relates to screening. The proposed amendment to current paragraph (17) would provide the term "department" when referring to the agency. The proposed revisions would also delete mention of the legacy name of the agency. The proposed deletion of current paragraph (18) would delete the term "radiation" since it would not be needed for this subchapter as revised (see previous discussion regarding Texas Health and Safety Code, Chapter 401). The proposed new paragraph (19) would define a new term, "pure-tone audiometer," since that term is used in the proposed amendments to the subchapter. Current subsection (19) is proposed to be renumbered to accommodate terms that have been added and deleted in these proposed amendments. Current paragraphs (20) and (21) are proposed for deletion as follows: the term "school" is proposed to be deleted since its content would be covered under the proposed revised "facility" definition in this section; and the term "screeners" is proposed for deletion as unnecessary in the rules as they would be amended. Proposed new paragraphs (20) and (21) provide renumbering of definitions to accommodate terms added and deleted in this section. A proposed amendment to current paragraph (22) would better reflect the underlying statutory authority at Health and Safety Code, §36.003(8). Proposed amendments to current paragraph (24) would renumber and clarify the use of the term "sweep-check" in these proposed rules. Other proposed amendments in this paragraph use the abbreviations for the words Hertz and decibel, which are previously provided. The proposed new paragraph (24) would define a new term, "telebinocular instrument," since the term is proposed to be used in other sections of the amended rules.

Current §37.23 is proposed to be repealed and replaced by language in three separate §§37.23 - 37.25, in order to provide needed reorganization to this subchapter to clearly differentiate

between vision screening, hearing screening and the requirements that facilities must follow.

Proposed new §37.23 would cover the procedures for vision screening. The proposed title for the new section is "Vision Screening." Proposed language explains that vision screening conducted by a person who is not a licensed professional must be conducted following the national standards set by the American Association for Pediatric Ophthalmology and Strabismus (AAPOS) (with a weblink given to those standards), with limited exceptions. The proposed language specifies the applicability of AAPOS standards in conducting vision screening, including allowable methods of vision screening and referral criteria. The proposed language also specifies two exceptions to the AAPOS standard requirements. One of the exceptions is for referrals of children less than five years of age when the screening indicates a difference of two lines in passing acuities. The department is choosing this exception as it is in line with American Academy of Pediatrics recommendations, and the department believes it will provide more comprehensive vision screening. A second exception pertains to referrals made for children five years of age or older when screening results indicate visual acuity less than 20/30 in either eye, rather than the AAPOS recommendation of 20/32. Strict adherence to AAPOS recommendations regarding visual acuity charts would create an undue financial burden for facilities across the state because most Texas facilities presently use charts with the 20/30 format, not 20/32, as recommended by AAPOS. A department subject matter expert in ophthalmology was consulted and advised that the difference between the two chart formats is not significant from a screening perspective, and therefore the economic hardship associated with requiring the AAPOS formatted charts would not be justified.

Other proposed language in §37.23 clarifies that persons who are not licensed professionals and who conduct vision screening must be trained and certified as described in this subchapter. Vision screening is expected to be part of the professional practice of licensed professionals, therefore licensed professionals (as defined in this subchapter) do not have to be trained and certified as described elsewhere in this subchapter. The proposed language adds that referrals for professional examination following vision screening shall not be to a specific individual but rather to a licensed professional, in order to avoid any possible conflict of interest when a screener makes a referral. Additional proposed language in this new §37.23 provides that the requirements of this section would not apply to an individual who is actively under the medical care of an appropriate licensed professional for one or more of the vision problems for which the screening is done. This language is based on the presumption that licensed professionals will administer appropriate medical care, as required by their licensure, to such patients.

Current language at §37.24 is proposed to be deleted, as stated previously. The entire §37.24 is proposed as new language covering the requirements related to hearing screening. The proposed title for the section is "Hearing Screening." Proposed language for the section would better align department rules related to hearing screening with the underlying statutory authority regarding hearing screening methods, referral criteria, and standards and procedures. The proposed language would clarify that hearing screening conducted under this subchapter is to be performed by certified screeners under this subchapter, with the same type of exception related to licensed professionals that is described previously in the vision screening section of this preamble. New proposed language at subsection (d) makes clear that each ear is to be screened one at a time. New proposed lan-

guage at subsection (e) would provide clarification that it is recommended that a screener conduct a re-screen when test results indicate failure to respond to any of the three frequencies in either ear. New language proposed at subsection (f) would clarify that a screener is to either conduct an extended recheck or initiate a referral for a professional examination when test results indicate failure to respond to a sweep-check. Proposed language at subsection (g) would clarify that a screener is to recommend that a child be referred for a professional examination when the test results indicate failure to respond to any of the three frequencies. Proposed new language at subsection (h) would clarify the procedure a screener must follow when conducting an extended recheck as part of hearing screening. This ensures that specific steps are taken when conducting extended rechecks, and is an updated version of the requirement currently found in the current rules, §37.23(c)(6). The proposed language in subsection (i) would add that referrals for professional examination following hearing screening shall not be to a specific individual but rather to a licensed professional in order to avoid any possible conflict of interest when a screener makes a referral. New proposed language at subsection (j) provides that the requirements of this section would not apply to an individual who is actively under the medical care of an appropriate licensed professional for one or more of the hearing problems for which the screening is done. This language is based on the presumption that licensed professionals will administer appropriate medical care, as required by their licensure, to such patients. Throughout the section, amendments were made to correct grammar and improve readability and user-friendliness.

Current language at §37.25 is proposed to be deleted. The entire §37.25 is proposed as new language with the title of "Facility Requirements; Department Activities." The proposed language would better align rule language with the underlying statutory authority and would be better organized than current language and thus improve clarity, readability and user-friendliness. Proposed new language at subsection (a) would clarify that it is the responsibility of each facility to ensure that each individual admitted to the facility complies with the screening requirements, with the specific reference to the facility chief administrator added to reflect Texas Health and Safety Code, §36.005(c). Proposed schedules and other requirements for specific groups of children are listed in at subsection (a)(1) - (6). These were derived by department subject matter experts, in compliance with the requirements of Texas Health and Safety Code, Chapter 36. Proposed language at new paragraph (1) would specify when a child four years of age or older enrolled in a facility for the first time must be screened. The proposed language would also prevent placing a burden on parents at the closing of a facility each summer and would specify time requirements for screenings at the beginning of the following school year (e.g., semester or quarter). Proposed language at new paragraph (2) would ensure that children in pre-kindergarten and kindergarten are screened during each of those years, in a timely manner. Proposed language at new paragraph (3) would provide, for the listed grades, the schedule for when vision and hearing screening must be conducted. Proposed language at new paragraph (4) would: better match the underlying statutory authority at Texas Health and Safety Code, §36.005(a); clearly state the timeframes facilities must follow for accepting screening documentation, consistent with Texas Health and Safety Code, §36.004(d); and would be worded to clearly capture all the children from pre-kindergarten on up. Proposed language at new subsection (a)(5) would clearly state that children who are not 4 years of age by September 1 of each year are not required to be screened until the following September.

Proposed language at new paragraph (6) would provide facilities the option of switching to an even-year screening schedule, with written department pre-approval. The facility must send a written request for a schedule change to the department. The proposed new language makes clear that any department approval would include conditions so that children do not miss necessary screening during the transition. Proposed new language at subsection (b) would better match the underlying statutory authority at Texas Health and Safety Code, §36.005(b), and would give facilities a certain amount of flexibility regarding the issue of provisional enrollment (consistent with Texas Health and Safety Code, §36.005(a)). Proposed language at subsection (c) provides clarification to language in the current rules regarding who is responsible for a minor, in order to better align with Texas Health and Safety Code, §36.005(b). Proposed new language at subsection (d) would clarify that volunteer assistants in screenings must have completed high school. This ensures that peers of high school students being screened will not participate in the screenings and is an updated version of the requirement found in the current rule, §37.29.

Current language at §37.26 is proposed for repeal. The entire §37.26 is proposed with new language designed to consolidate recordkeeping and reporting requirements into one rule section and would be titled "Recordkeeping and Reporting." The new section would provide clearer organization pertaining to the documentation, recordkeeping, and reporting requirements and would be better aligned with the underlying statutory authority. New subsection (a) would state the requirements specific to individuals conducting screenings. Proposed new language at paragraph (1) would clarify the documentation requirements of individuals conducting screenings at facilities, and those individuals other than professionals who conduct screenings outside of a facility, and would indicate the specific information that must be recorded in each child's screening record. Certified screeners may conduct screenings at a facility or outside of a facility. The documentation of such screenings, in either circumstance, must be submitted to the facility as stated in subsection (a)(1). The requirements are designed to help ensure that screenings are conducted correctly and are documented in an accurate manner. New proposed language at paragraph (2) would establish recordkeeping and reporting requirements for the new technology of photoscreening, which in this rulemaking is being introduced into department vision screening rules for the first time. Under this language, an individual who would be conducting photoscreening at a facility must first provide specified documentation to the facility in order to ensure the proper qualification of the screener to use that method. New proposed language at paragraph (3) of the subsection would specify recordkeeping and reporting requirements when a telebinocular instrument is used for vision screening, with the language organized in a similar manner to the provision at paragraph (2) regarding photoscreening. Proposed new language at paragraph (4) of the subsection provides the timeline by when individuals conducting screenings must submit the screening records, with the documentation described in new paragraph (1), to the facility. The documentation is to be provided at the time of the screening. Proposed new language at paragraph (5) provides a cross-reference to §37.27 requirements regarding certifications and refresher courses.

Proposed new language at subsection §37.26(b) would provide the recordkeeping and reporting requirements for facilities. Language at paragraph (1) of the subsection would require a facility to maintain the specified vision and hearing screening records for a minimum of two years, which is consistent with re-

quirements found at Texas Health and Safety Code, §36.006(a). Proposed language at paragraph (2) relates to facility record-keeping for documents associated with claiming exemptions to screening under Texas Health and Safety Code, §36.005(b). Proposed paragraph (3) relates to facility recordkeeping for documents associated with individuals using a photoscreener for vision screening. Proposed paragraph (4) relates to the transferring of records between facilities, consistent with Texas Health and Safety Code, §36.006(c). Proposed language at paragraph (5) is derived from current §37.27--revised to better reflect the requirements of inspecting records in Texas Health and Safety Code, §36.006(b). Proposed language at paragraph (6) of the subsection relates to the annual report that a facility must submit to the department. The proposed rules would provide a web link to the department's instructions on submitting the report, and subparagraphs (A) and (B) would provide the specific categories on which a facility would be required to report. Additional proposed language at subparagraph (B) would specify that the vision screening category "total number screened" would include the number screened with telebinocular screening. Subsection (c) has additional recordkeeping requirements for audiometers or audiometric screening equipment. Proposed new language at subsection (d) would provide the department address for submissions under this section.

Current language at §37.27, "Inspection of Facility Records," is proposed for repeal as part of the reorganization described above. New language is proposed for §37.27 under the title "Standards and Requirements for Screening Certification and Instructor Training," with the goal of consolidating and clarifying rule language pertaining to the training and certification of screeners by the department and by department-trained and certified instructors. This new language covers the related matter of training and certification of these instructors, as well as covering issues surrounding the refresher courses that screeners and instructors must take. Special training requirements for individuals wishing to use certain screening instruments are also covered in the proposed new section. The proposed section would reiterate that vision and/or hearing screeners must be properly certified unless they are a licensed professional (as the term is defined in this subchapter). The proposed section would also clarify that there are two options for obtaining screening certification: one being a certificate issued directly by the department following successful completion of a training course given by department staff; and the other being a certificate issued by an instructor trained and authorized by the department to issue such screening certificates. Proposed language also clarifies that there is no cost to taking a course in either option. Language at proposed subsection (a)(1) gives details about screening courses and requires that a person be a high school graduate in order to be eligible to take the course. The department believes this eligibility requirement is appropriate because a certain level of education, coupled with the maturity of someone the age of a high school graduate, is important for comprehending the material a screener must learn and for conducting the screenings. Language at proposed subsection (a)(2) gives details about instructor issuance of screening certificates, as well as covering instructor training. The subsection also requires the individual be a high school graduate to be eligible to take the instructor training course, based on the same reasoning as given for the same requirement for screeners as in subsection (a)(1). Language at §37.27(b) would provide the requirements applicable to screening certificates issued under this subsection. Proposed language at paragraph (1) requires screeners to follow the requirements of this subchapter and provides that failure to do so

may lead to the modification, suspension and/or revocation of the screening certificate. Proposed language at paragraph (2) would provide the additional training requirements for an individual wishing to use a photoscreener for vision screening, including required photoscreener-specific refresher courses every five years. Additionally, the proposed language would require that individuals who conduct vision screening with a photoscreener must also be certified under subsection (a)(1) or (2) of this section. Subsection (b)(2) also requires that documentation of photoscreening training, containing certain specified information, be submitted to the instructor at the beginning of the courses described in subsection (a)(1) and (2) of the section. Proposed language at subsection (b)(3) would provide that screeners who use a telebinocular instrument must do so in accordance with manufacturer guidelines and that they must have a full understanding of the pass/fail referral criteria for this type of vision screening. The remaining paragraph language would track similar language in paragraph (2) regarding the requirement for having a current screening certificate. Proposed language at paragraph (4) would specify that a screening certificate is good for five years (unless an adverse action is taken against it by the department) and that renewals are handled as described at paragraph (5) of this section. Proposed language at paragraph (5) would provide the requirements for renewal of screening certificates and for refresher training courses, including associated deadlines and the consequences of not renewing the certification within the required time period. The proposed amendment at paragraph (6) would provide clarification about when the department may modify, suspend, or revoke a screening certificate and requires the department to send a notice of the action to the individual holding the certification. The proposed language at paragraphs (7) and (8) would provide information regarding the due process rights of an individual subject to an action under proposed paragraph (6), including a cross-reference to existing department hearing rules found at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

Proposed language at §37.27(c) would provide all the details regarding the process by which an instructor, trained and certified as an instructor by the department, may conduct screener trainings around the State of Texas and issue screening certificates at the conclusion of the training sessions. The proposed language states that instructors may not charge any type of fee for these screening courses, because the department does not want to penalize individuals who live farther away from Austin and thus cannot avail themselves of the free screening courses given by department staff. Proposed language at paragraph (1) lists the qualifications an individual must meet prior to taking an instructor course. To be eligible, the person must: have a current, valid department screening certificate and have actual experience performing screenings pursuant to that certificate; have experience conducting trainings to groups of adults; and must be an audiologist, speech pathologist, optometrist or registered nurse, with the applicable Texas license that is current and in good standing under Texas law. This third requirement is proposed because these professionals will have already had a type of training for their profession that (in conjunction with the training given by the department) is needed to effectively train others in vision and/or hearing screening. Proposed language at paragraph (2) would detail the time period that instructor certification is valid, as well as the process and associated deadlines for renewals and required refresher courses. This language would also state that failure to meet the renewal deadlines would require the individual to attend the basic instructor course in order to obtain a new instructor certification. These deadlines are designed to prevent

unqualified instructors from giving screening courses and issuing certificates. Proposed language in paragraphs (3) and (4) of the subsection would require instructors to use training materials obtained from the department and to get prior approval from the department (by the listed deadline) before each training course begins and to respond to any questions that the department might have. Proposed language at paragraph (5) of the subsection allows instructors who are in good standing with the department under this section to conduct the screening refresher courses described in subsection (b)(4) of this section. This proposed language cross-references other requirements in the section. Proposed language at subsection (c)(6) of the section would require the instructor to submit certain documentation to the department (by the listed deadline) when the instructor issues certificates of screening following the training courses. Proposed language at paragraph (7) would provide clarification about when the department may modify, suspend, or revoke an instructor certification and requires the department to send a notice of the action to the individual holding that certification. The proposed language at paragraphs (8) and (9) would provide information regarding the due process rights of an individual subject to an action under proposed paragraph (7), including a cross-reference to existing department hearing rules found at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

Current language at §37.28 is proposed for repeal as the information regarding the transfer of an individual's screening records is now covered in §37.26(b)(4). New §37.28 is proposed with new language and would be titled "Hearing Screening Equipment Standards and Requirements." Currently, the language regarding hearing screening equipment standards is in §§37.32 - 37.39. Those sections are proposed for repeal as the content would be contained in new §37.28, which would provide logical organization of hearing equipment standards and requirements, in order to improve clarity, readability, and user-friendliness. Subsection (a) of the section would cover the applicability of the section in terms of individuals, entities (including calibration companies) and hearing screening equipment/devices. Proposed language at subsection (b) of the section would clarify the department's registration requirements for those individuals and entities using any of the equipment listed in subsection (a) and would provide a department registration weblink. Proposed language at subsection (c) of the section would provide the technical standards which individuals/entities listed in subsection (a) must follow as to the screening equipment/devices listed in that same subsection. Specifically, ANSI standards must be met, or else manufacturer's specifications if no ANSI standards apply to the specific equipment or device in question. The purpose of these standards is to ensure that the equipment/devices used for hearing screening are appropriate and are maintained in their proper working condition so that consistent, reliable hearing screening results are produced from their use. Proposed language at subsection (d) of the section would cross-reference the training requirements found in proposed §37.27. Proposed language at subsection (e) of the section would provide the registration requirements for individuals and entities who perform calibration services on equipment referenced in subsection (a) and would provide a department registration weblink. Proposed language at subsection (f) would specify that only calibration firms shall perform periodic electronic calibrations and exhaustive electronic calibrations on the equipment/devices listed in subsection (a) and that those firms shall notify the owner of the audiometer that the audiometer has been calibrated. Specific instructions on the form of the notifications are also proposed, along with a requirement that the equipment owner maintain the

notifications and make them readily available to the department or its designated representative upon request. Proposed language in subsection (g) would provide certain recordkeeping requirements for those individuals/entities covered by the section under subsection (a). These requirements in subsections (f) and (g) are also cross-referenced at proposed §37.26, which relates to recordkeeping and reporting under the subchapter. Proposed language at subsection (h) would provide exceptions to the registration requirements of the section.

Language currently found at §37.34(c)(1) and (2) is proposed for deletion because the department is not aware of any federal law that preempts the requirements of Texas Health and Safety Code, Chapter 36.

#### FISCAL NOTE

Ms. Margaret Bruch, Acting Director, Specialized Health Services Section, has determined that for each year of the first five years the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed, other than greater efficiencies resulting from improved organization, clarity, readability and user-friendliness.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bruch has also determined that there will be no adverse economic impact on micro-businesses or small businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. Any micro-businesses or small businesses impacted by these rules should benefit from the improved clarity, readability and user-friendliness of the proposed reorganization and revisions.

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

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

#### PUBLIC BENEFIT

Ms. Bruch has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefits anticipated as a result of enforcing or administering the sections are: increased flexibility related to vision screening due to the introduction of photoscreening into the rules; and greater efficiency for stakeholders and department program staff in operating this program, resulting from the proposed subchapter reorganization and revisions to improve clarity, readability, and user-friendliness.

#### REGULATORY ANALYSIS

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



## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Elijah Brown, Vision, Hearing, and Spinal Screening, Health Screening and Case Management Unit, Department of State Health Services, Mail Code 1938, P.O. Box 149347, Austin, Texas 78714-9347; by fax to (512) 776-7414; or by email to [elijah.brown@dshs.state.tx.us](mailto:elijah.brown@dshs.state.tx.us). Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

## LEGAL CERTIFICATION

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

## 25 TAC §§37.21 - 37.28

### STATUTORY AUTHORITY

The amendments and new rules are authorized by Health and Safety Code, Chapter 36; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments and new rules affect Government Code, Chapter 531; Health and Safety Code, Chapters 36 and 1001.

### §37.21. Purpose.

The purpose of this subchapter [these rules] is to implement Texas Health and Safety Code, Chapter 36, concerning the early identification of individuals from birth through 20 years of age who have special senses and communication disorders and who need remedial vision, hearing, speech, or language services. [The rules also implement Health and Safety Code, Chapter 401, concerning radioactive materials and other sources of radiation by providing guidance for the safe and effective use of audiometers, audiometric testing devices, and audiometric calibration equipment.]

### §37.22. Definitions.

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

(1) American Association for Pediatric Ophthalmology and Strabismus (AAPOS)--AAPOS is a nationally-recognized professional body which issues recommended vision screening standards. The goals of AAPOS are to advance the quality of children's eye care, support the training of pediatric ophthalmologists, support research activities in pediatric ophthalmology, and advance the care of adults with strabismus.

~~(1) Act--The Texas Radiation Control Act, Health and Safety Code, Chapter 401-]~~

(2) American National Standards Institute, Inc. (ANSI)--The national coordinator of [voluntary] standards development and the United States clearinghouse for information on national and international standards.

(3) (No change.)

(4) Audiometric calibration equipment--Electro-acoustical equipment used to calibrate audiometers and audiometric testing devices. The term [It also] includes frequency counters, voltmeters, and distortion measuring equipment used to calibrate audiometers and audiometric testing devices.

(5) (No change.)

(6) Biological calibration check--The process of testing a person having a known, stable audiometric curve that does not exceed 25 decibels (dB) [dB] hearing level at any frequency between 250 and 6000 Hertz (Hz) [hertz], and comparing the test results with the subject's known baseline audiogram.

(7) Calibration--The process of comparing an instrument or device with a standard to determine its accuracy and to make the necessary repairs or adjustments to assure that the operating characteristics are within the allowable limits established by a national standard, all in accordance with applicable legal requirements [or the manufacturer's specifications].

(8) Certification--The process by which the Department of State Health Services (department) [Texas Department of Health] trains individuals to conduct vision and/or hearing screening as well as to then provide training on those [screeners and instructors of screeners to use the currently approved] screening procedures [procedure for conducting vision and hearing screening].

(9) dB [Decibel (dB)]--The decibel is a [A] unit for expressing the relative intensity of sounds on a scale from zero for the average least perceptible sound to approximately 130 for the average pain level.

~~[(10) Department--The Texas Department of Health.]~~

(10) ~~[(11)] Exhaustive calibration--A calibration that tests all settings for both earphones.~~

(11) ~~[(12)] Extended recheck--A screen used after the child has failed two sweep-check screens. The screener may perform an extended recheck or initiate a referral for a professional examination, as defined in this section, after the two failed sweep-check screens. [An optional screen to be used after the student has failed two sweep-check screens. The screen may be conducted immediately after the second sweep-check screen.]~~

(12) ~~[(13)] Facility--Includes [the following] public or[:] private preschools and schools, as defined as follows[:] parochial; or denominational entities[:]~~

(A) schools, as the term is defined at Texas Health and Safety Code, §36.003(7);

(B) preschools, as the term is defined at Texas Health and Safety Code, §36.003(3);

(C) ~~[(B)] child care centers licensed by the Department of Family and Protective Services (DFPS); and~~

(D) ~~[(C)] child care homes licensed by DFPS [the Department of Family and Protective Services].~~

(13) ~~[(14)] Hz [Hertz (Hz)]--Hertz is a [A] unit of frequency equal to one cycle per second.~~

(14) ~~[(15)] Licensed professional--An individual[:]~~

[(A)] whose legally-defined [legally defined] scope of practice under the license includes knowledge and experience in conducting professional examinations and screenings for vision and/or hearing abnormalities in children, all consistent with this subchapter and Texas Health and Safety Code, Chapter 36. The terms "professional examination" and "screening" are as defined in this section. [the area for which the screening is conducted; and]

[(B) who uses department-approved techniques or professional practice standards for the screening.]

(15) Pass/Fail--Allowable documentation of results of vision screening when photoscreening is used for vision screening, in accordance with this subchapter. The documentation of the screening results is in lieu of visual acuity results using "20/20" format.

(16) Photoscreening--A form of pediatric vision screening that uses a special-purpose camera to determine how well a child can see. It is an alternative under this subchapter to visual acuity-based screening with an eye chart for certain children, as specified herein. Other related terms are: autorefractor, objective screening and instrument-based screening. Photoscreening cannot determine exactly how well a child's visual acuity is developing.

[(17) [(16)] Professional examination (also referred to as examination)--A diagnostic evaluation performed by an appropriately licensed professional or[, if no license exists in this state,] by a department-certified [certified or sanctioned] individual whose expertise addresses the diagnostic needs of the individual identified as having a possible special senses or communication disorder. A professional examination is one that is done according to the requirements of this subchapter and of the Texas Health and Safety Code, Chapter 36.

[(18) [(17)] Program--The department's [Texas Department of Health's] Vision and Hearing Screening Program.

(19) Pure-tone audiometer--A pure-tone audiometer electronically generates pure-tones which are used as signals to test a person's hearing.

[(18) Radiation--One or more of the following:]

[(A) gamma and x rays, alpha and beta particles, and other atomic or nuclear particles or rays;]

[(B) stimulated emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or]

[(C) any sonic, ultrasonic, or infrasonic waves (acoustic radiation) emitted from an electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.]

(20) [(19)] Reporting year--A 12-month period beginning June 1 of each year and ending May 31 of the following year.

[(20) School--An educational institution that admits children who are five years of age or older but less than 21 years of age.]

[(21) Screeners--Licensed professionals or individuals certified by the department to conduct vision and/or hearing screening.]

(21) [(22)] Screening--A test or battery of tests for rapidly determining [the determination of] the need for a professional examination.

(22) [(23)] Screening equipment--An instrument or device used to perform a measurement or measurements for the assessment of sensory abilities.

(23) [(24)] Sweep-check [Sweep-check hearing screening test (sweep-check)]--A quick hearing screening test using a pure-tone audiometer to determine whether a person can hear the following frequencies: 1000 Hz [hertz], 2000 Hz [hertz], and 4000 Hz [hertz] at less than or equal to 25 dB [decibels].

(24) Telebinocular instrument--A stereoscopic instrument for determining various eye defects and measuring visual acuity.

(25) Testing equipment--An instrument or device used under this subchapter to perform a measurement or measurements to substantiate or verify the presence or absence of sensory impairment(s).

(26) Tests--Procedures under this subchapter to measure special senses and communication functions.

(27) (No change.)

#### §37.23. Vision Screening.

(a) Screening is required, for individuals who attend a facility, to detect vision disorders. Vision screening conducted under this subchapter by a person who is not a licensed professional, as the term is defined in this subchapter, must be conducted following the national standards set by AAPOS currently found at <http://www.aaapos.org/terms/conditions/131>, as revised, as they apply to age, verbal ability, ability to cooperate with screening, allowable methods of screening in different situations, and referral criteria, with the following exceptions.

(1) For children less than five years of age, refer for a professional examination when there is a difference of two lines between passing acuities in either eye.

(2) For children five years of age and older, refer for a professional examination when screening results indicate visual acuity of less than 20/30 in either eye (rather than 20/32 as listed in the AAPOS standards).

(b) A person who is not a "licensed professional," as that term is defined in this subchapter, who conducts vision screening must be trained and certified as described in §37.27 of this title (relating to Standards and Requirements for Screening Certification and Instructor Training).

(c) When a screener makes a referral based on the screening results under subsection (a) of this section, that referral shall be to a licensed professional for a professional examination, and not to a specific individual.

(d) The requirements of this section do not apply when the individual is already actively under medical care by an appropriate licensed professional for one or more of the vision problems for which screening is done under this section. In order to claim this exception, the individual under the scenarios described at Texas Family Code, §32.003 or, if the individual is a minor, the individual's parent, managing conservator or legal guardian, must submit documentation from the licensed professional to the facility. The documentation must be signed and dated by the licensed professional, and must affirmatively state that the individual is under active, ongoing medical care from the licensed professional for specific vision problems as referenced in this subsection.

#### §37.24. Hearing Screening.

(a) Screening is required, for individuals who attend a facility, to detect hearing disorders. Hearing screening under this subchapter must be conducted using screening methods and referral criteria, and in compliance with other requirements, as follows.

(b) A person who is not a "licensed professional," as that term is defined in this subchapter, who conducts hearing screening must be trained and certified as described in §37.27 of this title (relating to Standards and Requirements for Screening Certification and Instructor Training).

(c) A pure-tone audiometer shall be used to conduct a sweep-check screen.

(d) Screening results shall be recorded for each ear at less than or equal to 25 dB for 1000 Hz, 2000 Hz, and 4000 Hz.

(e) A rescreen with another sweep-check is recommended if test results indicate failure to respond to any of the three frequencies in either ear, and it should be conducted no sooner than three weeks but not more than four weeks after the initial screening.

(f) An extended recheck may be conducted or a referral to a professional examination shall be made for all children whose test results indicate failure to respond to any of the three frequencies in either ear on the second sweep-check.

(g) If the extended recheck results in a failure to respond to any frequency in either ear at greater than 25dB, the screener must recommend that a professional examination be immediately conducted.

(h) An extended recheck shall be conducted according to the following procedures.

(1) Beginning with the right ear, present the tone at 40 dB hearing level (HL) and at 1000 Hz for two to three seconds. If no response is obtained, record "greater than 40 dB."

(2) If the child responds at 40 dB, lower the intensity to 30 dB HL and present the tone again.

(3) Lower the HL in 10 dB increments until no response is obtained, or until 20 dB is reached. If a response is obtained at 20 dB, record "20 dB."

(4) If no response is obtained, increase the HL dial in 5 dB increments until a response is obtained. Record the dB results obtained at 1000 Hz for the right ear.

(5) Repeat steps in paragraphs (1) - (4) of this subsection at 40 dB HL for 2000 Hz and 4000 Hz.

(6) Repeat steps in paragraphs (1) - (5) of this subsection for the left ear.

(i) When a screener makes a referral based on the screening results under subsection (a) of this section, that referral shall be to a licensed professional for a professional examination, and not to a specific individual.

(j) The requirements of this section do not apply when the individual is already actively under medical care by an appropriate licensed professional for one or more of the hearing problems for which screening is done under this section. In order to claim this exception, the individual under the scenarios described at Texas Family Code, §32.003 or, if the individual is a minor, the individual's parent, managing conservator or legal guardian, must submit documentation from the licensed professional to the facility. The documentation must be signed and dated by the licensed professional, and must affirmatively state that the individual is under active, ongoing medical care from the licensed professional for specific hearing problems as referenced in this subsection.

#### §37.25. Facility Requirements; Department Activities.

(a) The chief administrator of each facility shall ensure that each individual admitted to the facility complies with the screening requirements of this subchapter, according to the following schedule.

(1) Children four years of age or older, who are enrolled in any facility for the first time, must be screened for possible vision and hearing problems within 120 calendar days of enrollment. If a child is enrolled within 60 days of the date a facility closes for the Summer, the child's vision and hearing must be tested within 120 days of the beginning of the following school year.

(2) Children enrolled in pre-kindergarten and kindergarten must be screened each year within 120 days of enrollment.

(3) Children enrolled in the first, third, fifth, and seventh grades must receive vision and hearing screening in each of those grade years (can be done at any time during each of those years).

(4) Except for children enrolled in pre-kindergarten, kindergarten or first grade, a facility shall exempt any child from screening as required by paragraphs (1) - (3) of this subsection if the child's parent, managing conservator, or legal guardian, or the individual under the scenarios described at Texas Family Code, §32.003, submits a record to the facility showing that a professional examination was properly conducted during the grade year in question or during the previous year. The record must be submitted to the facility during the grade year in which the screening would otherwise be required.

(5) Children enrolled in a facility who turn four years of age after September 1 of that year are exempt from screening until the following September.

(6) Upon written request pre-approved by the department, the screening of vision and hearing performed at a facility may occur on an even-year schedule (i.e., pre-kindergarten, kindergarten, and first, second, fourth, and sixth grades instead of pre-kindergarten, kindergarten, and first, third, fifth, and seventh grades). Any department approval will include conditions so that children do not miss necessary screening during the transition.

(b) A child's parent, managing conservator, or legal guardian, or the individual under the scenarios described at Texas Family Code, §32.003, may execute an affidavit stating that a person, other than the individual secured by the facility to conduct screenings at the facility, shall conduct the screening as soon as is feasible. The facility may admit the child on a provisional basis for up to 60 days, or may deny admission until the screening record(s) are provided to the facility.

(c) A facility shall not require a child to be screened if the child's parent, managing conservator, or legal guardian, or the individual under the scenarios described at Texas Family Code, §32.003, submits to the facility, on or before the date vision or hearing screening is scheduled, an affidavit in lieu of the screening record(s) stating that the vision or hearing screening conflicts with the tenets and practices of a church or religious denomination of which the affiant is an adherent or member.

(d) Only individuals who have completed high school may serve as volunteer assistants during vision and/or hearing screenings. It is the responsibility of the certified screener to determine how any volunteer assistant(s) will be used during the screening process, consistent with all state and federal confidentiality requirements.

#### §37.26. Recordkeeping and Reporting.

(a) Individuals conducting screenings under this subchapter must comply with the following recordkeeping and reporting requirements.

(1) Individuals conducting screenings at the facility (and those other than licensed professionals conducting screenings outside of the facility) shall document in each child's screening record the specific screening conducted, the date the screening was conducted, obser-

uations made during the screening, and the final results of the screening. The individual shall also ensure that the following are included in the documentation: the name of the child, age or birthdate of the child, and whether the child is wearing corrective lenses during the vision screening. The documentation required under this subsection must also be signed and dated by the person who conducted the screening.

(2) Individuals using photoscreening for vision screening must comply with the recordkeeping and reporting requirements detailed at §37.27(b)(2) of this title (relating to Standards and Requirements for Screening Certification and Instructor Training). Additionally, prior to conducting photoscreening at a facility, the individual must submit copies of these same documents to that facility in addition to the documents which must be submitted under subsection (b)(3) of this section.

(3) Individuals using a telebinocular instrument for vision screening must comply with the recordkeeping and reporting requirements detailed at §37.27(b)(3) of this title. Additionally, prior to conducting telebinocular screening at a facility, the individual must submit copies of these same documents to that facility in addition to the documents which must be submitted under subsection (b)(3) of this section.

(4) Individuals conducting screenings at a facility (and those other than licensed professionals conducting screening outside of the facility) shall submit the documentation referenced in paragraph (1) of this subsection to the facility at the time of that screening.

(5) Individuals must submit documentation to the department related to certifications and refresher courses, as specified in §37.27 of this title.

(b) Facilities must comply with the following recordkeeping and reporting requirements.

(1) Each facility shall maintain vision and hearing screening records under this section onsite for at least two years.

(2) A facility must maintain screening records regarding any individual claiming the exemptions found in §37.23(d) of this title (relating to Vision Screening) and/or §37.24(j) of this title (relating to Hearing Screening).

(3) A facility shall maintain the records it receives from screeners under subsection (a)(2) of this section, related to the use of photoscreening for vision screening at the facility.

(4) An individual's screening records may be transferred among facilities without the consent of the individual under the scenarios described at Texas Family Code, §32.003 or, if the individual is a minor, the minor's parent, managing conservator, or legal guardian, pursuant to Texas Health and Safety Code, §36.006(c).

(5) The recordkeeping required in this section must be made available to the department in a timely manner upon request. The department may, directly or through its authorized representative, enter a facility and inspect records maintained relating to vision and hearing screening.

(6) On or before June 30 of each year, each facility shall submit to the department a complete and accurate annual report on the vision and hearing screening status of its aggregate population screened during the reporting year. Facilities shall report in the manner specified by the department (currently found at <http://chrstx.dshs.state.tx.us>). Facilities are required to report on the following categories.

(A) For hearing screening--The total number screened; the number who failed; the number referred for professional examination; the number transferred out of the facility prior to the facility receiving the professional examination results; professional examination

results indicating none of the disorders present which are screened for under this section; professional examination results indicating a disorder(s) which is screened for under this section; and referral for a professional examination with no indication that a professional examination was ever done.

(B) For vision screening--The total number screened; the total number screened with correction (e.g. glasses or contacts); the total number screened with photoscreening; the number who failed; the number referred for professional examination; the number transferred out of the facility prior to the facility receiving the professional examination results; professional examination results indicating none of the disorders present which are screened for under this section; professional examination results indicating a disorder(s) which is screened for under this section; and referral for a professional examination with no indication that a professional examination was ever done. The "total number screened" includes the number screened with telebinocular screening.

(c) There are additional recordkeeping requirements in §37.28(f) and (g) of this title (relating to Hearing Screening Equipment Standards and Requirements) for individuals or entities who own and/or use audiometers and audiometric screening equipment.

(d) For all submissions to the department under this subchapter, use the following contact information (unless otherwise specified): Vision, Hearing and Spinal Screening Program, Department of State Health Services, Mail Code 1978, P.O. Box 149347, Austin, Texas 78714-9347.

§37.27. Standards and Requirements for Screening Certification and Instructor Training.

(a) Individuals who conduct vision and/or hearing screening must be certified under this section unless the screening is conducted by a licensed professional. There are two options for obtaining this certification: a certificate issued directly by the department; or a certificate issued by an instructor who has been trained and authorized by the department to issue certificates. There is no cost to taking the course in either scenario.

(1) The department offers certification courses, and issues certificates to those who successfully complete them. To be eligible to take the department's certification course, an individual must be a high school graduate and sign a written statement to that effect at the beginning of the course. Individuals who successfully complete the course, including passing the associated tests, will be issued a certificate by the department.

(2) The department trains instructors who themselves give certification courses, as described in this section. The eligibility requirement to attend such a course is the same as is described at paragraph (1) of this subsection. Individuals who successfully complete the course, including passing the associated tests, will be issued a certificate signed by the authorized instructor. It will have the same validity, and is subject to the same restrictions, as a certificate issued under paragraph (1) of this subsection.

(b) Screening certificates issued under this section are subject to the following requirements.

(1) Individuals who receive a certificate are authorized to conduct vision and/or hearing screening (as applicable to the course taken, and as listed on the certificate) in accordance with this subchapter. Certified screeners are required to comply with this subchapter, and failure to do so is grounds for the modification, suspension and/or revocation of the certification as provided in this section.

(2) Individuals using a photoscreener for vision screening must have successfully completed instrument-specific training (includ-

ing passing all associated tests) in accordance with manufacturer guidelines and must have a full understanding of the pass/fail referral criteria in accordance with AAPOS standards. Individuals conducting photoscreening must also have a current screening certificate under subsection (a)(1) or (2) of this section. Documentation of the photoscreening training must be submitted to the instructor upon attendance at a certification class and include the date and location the training was taken, and the name, affiliation and contact information of the instructor. The individual must successfully complete instrument-specific refresher training (including passing any associated tests) every five years. Such refresher training must be completed during the fifth year of certification from the date the preceding certificate was issued.

(3) Individuals using a telebinocular instrument for vision screening must be familiar with the instrument in accordance with manufacturer guidelines and must have a full understanding of the pass/fail referral criteria. Individuals conducting telebinocular screening must also have a current screening certificate under subsection (a)(1) or (2) of this section.

(4) Screening certification under this section allows the individual to screen children for vision and/or hearing problems (as applicable to the course taken, and as listed on the certificate) under this subchapter for a period of five years, with renewals processed as described in paragraph (5) of this subsection.

(5) Screening certification may be renewed by attending a department-approved refresher training course (either offered directly by the department or by an instructor authorized under this section). The refresher training course must be completed during the fifth year of certification from the date the preceding certificate was issued. Once a refresher training course is successfully completed, the five-year cycle begins again. If certification is not renewed within the required time period, the individual must attend the basic certification training course (i.e., a refresher course will not be sufficient).

(6) When the department receives information from any source that indicates a screener has not been following the requirements of this subchapter, the department may modify, suspend, or revoke the certification. The department will send a notice to the affected individual as part of any such action being taken.

(7) The affected individual has 20 days after receiving the notice, referenced in this paragraph, to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing, and mailed or hand-delivered to the program at the address specified in §37.26(d) of this title (relating to Recordkeeping and Reporting). If an individual who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

(8) Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules, at §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(c) Individuals who successfully complete a department instructor training course, including all associated testing, are authorized to conduct screening trainings and issue screening certificates to individuals who successfully complete the screening training (including all associated testing), subject to the requirements of this section. Instructors may not charge any kind of fees for their activities under this section.

(1) Individuals wishing to take the instructor course must first meet the following qualifications:

(A) have a current, valid department screening certification, and have experience performing screenings under that certificate;

(B) have experience conducting trainings to groups of adults; and

(C) be an audiologist, speech pathologist, optometrist or a registered nurse and must have the applicable Texas license, current and in good standing under Texas law.

(2) Department authorization for instructors to conduct trainings is valid for five years from the date certification was issued. The individual must successfully complete a department-approved instructor training refresher course (including passing any associated tests) and submit documentation of successful completion to the department within 30 days of completion of the course. Such refresher training must be completed during the fifth year of certification from the date the preceding certificate was issued. Failure to comply with these requirements, by the deadline given, means that the individual must then attend the basic instructor training course (i.e., a refresher course will not be sufficient).

(3) Once authorized by the department to conduct trainings, instructors must do so using training materials obtained from the department.

(4) All proposed screening training sessions must be approved by the department at least 15 working days prior to the training session. The instructor must provide all information sought by the department, by the deadlines given.

(5) Instructors in good standing under this section may teach screening refresher courses as described in subsection (b)(4) of this section. Such refresher courses are subject to the same requirements under this section as those pertaining to initial screening courses.

(6) When a department-authorized instructor issues a certificate of vision and/or hearing screening, the instructor has 14 days to submit the attendance sheets, evaluations and the tear-off portion of the department's certification, and the photoscreening certificate, if applicable, to the department. These original documents should be submitted to the program at the address found at §37.26(d) of this title. The instructor should maintain a copy.

(7) When the department receives information from any source that indicates a screening instructor has not been following the requirements of this subchapter, the department may modify, suspend, or revoke the certification. The department will send a notice to the affected individual as part of any such action being taken.

(8) The affected individual has 20 days after receiving the notice, referenced in paragraph (7) of this subsection, to request a hearing on the proposed action. It is a rebuttable presumption that a notice is received five days after the date of the notice. Unless the notice letter specifies an alternative method, a request for a hearing shall be made in writing, and mailed or hand-delivered to the program at the address specified in §37.26(d) of this title. If an individual who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the individual is deemed to have waived the hearing and the action may be taken.

(9) Appeals and administrative hearings will be conducted in accordance with the department's fair hearing rules at §§1.51 - 1.55 of this title.

§37.28. *Hearing Screening Equipment Standards and Requirements.*

(a) Except as otherwise specifically provided, the sections in this subchapter apply to all persons and entities (e.g., calibration com-

panies) who receive, possess, acquire, transfer, own, or use audiometers, audiometric testing devices, and audiometric calibration equipment, and to all audiometers used for audiometric screening and hearing threshold tests, all audiometric testing devices, and all audiometric calibration equipment used in the State of Texas.

(b) Each individual and entity (e.g., calibration company) using any of the equipment referenced in subsection (a) of this section must be registered with the department, in the manner prescribed by the department (see information at <http://www.dshs.state.tx.us/vhs/audio.shtm>). Registration information must be updated in a timely manner to keep it current.

(c) Equipment referenced in subsection (a) of this section shall meet the appropriate current ANSI standards, or the manufacturer's specifications if no ANSI standards apply, and all other applicable federal and state standard(s) and/or regulation(s) for such equipment.

(d) Individuals must also be trained by or undergo training approved by the department in the proper use of this equipment, as detailed in §37.27 of this title (relating to Standards and Requirements for Screening Certification and Instructor Training).

(e) Individuals and entities who perform calibration services on the equipment referenced in subsection (a) of this section shall register with the department, and must update that registration in a timely manner to keep it current, in a manner prescribed by the department (see information at <http://www.dshs.state.tx.us/vhs/audio.shtm>).

(f) Only calibration firms shall perform periodic electronic calibrations and exhaustive electronic calibrations. Calibration firms shall provide notification to the owner of the audiometer being calibrated that the audiometer has been calibrated. The notification may be in the form of a decal or sticker affixed to the audiometer, or in hard copy documentation that must be maintained by the owner and be made readily available to the department or its representative upon request.

(g) Upon reasonable notice, each individual or entity using audiometric screening equipment shall make available to the department, in a timely manner, records maintained pursuant to this subchapter. Calibration forms and records for all equipment referenced in subsection (a) of this section, including monthly biological calibration data, shall be maintained for inspection by the department for three years.

(h) Registration is not required for:

(1) equipment in storage, being shipped, or being offered for sale, if the audiometer, audiometric testing devices, and audiometric calibration equipment is not being used; and

(2) equipment limited to nonhuman use.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400856

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 6, 2014

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



25 TAC §§37.23 - 37.39

(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 Department of State Health Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

#### STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, Chapter 36; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The repeals affect Government Code, Chapter 531; Health and Safety Code, Chapters 36 and 1001.

§37.23. *Vision and Hearing Screening Requirements.*

§37.24. *Required Record of Proof of Screening.*

§37.25. *Authorized Signatures.*

§37.26. *Dates for Submitting Proofs of Screening and Reports of Screening Results.*

§37.27. *Inspection of Facility Screening Records.*

§37.28. *Transfer of Individual Records or Proofs of Screenings Between Facilities.*

§37.29. *Standards for Screening Tests and Screener Training Courses in Vision and Hearing.*

§37.30. *Recertification of Screeners.*

§37.31. *Modification, Suspension, or Termination of Screener or Instructor Certification.*

§37.32. *Hearing Screening Equipment Standards.*

§37.33. *Scope of Radiation Control Requirements Related to Audiometers, Audiometric Testing Devices, and Audiometric Calibration Equipment.*

§37.34. *Registration of Equipment and Individuals Using the Equipment.*

§37.35. *Exemptions.*

§37.36. *Violations.*

§37.37. *Inspections and Tests.*

§37.38. *Calibration of Audiometers and Audiometric Testing Devices.*

§37.39. *Audiometric Calibration Equipment.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Counsel

Department of State Health Services

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CHAPTER 412. LOCAL MENTAL HEALTH  
AUTHORITY RESPONSIBILITIES  
SUBCHAPTER A. MENTAL HEALTH  
PREVENTION STANDARDS

## 25 TAC §§412.1 - 412.5

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§412.1 - 412.5, concerning the criteria for approving trainers of mental health first aid (MHFA) services.

### BACKGROUND AND PURPOSE

The new rules are necessary to comply with House Bill (HB) 3793, 83rd Legislature, Regular Session, 2013, which amended Health and Safety Code, Chapter 1001 by adding Subchapter H, §§1001.201 - 1001.206. The proposed subchapter provides the criteria for providing grants to local mental health authorities (LMHAs) to have employees or contractors of their centers certified as trainers of MHFA and the criteria for training educators in MHFA within their local independent school districts or service areas.

The rules will specify the standards and the requirements for a person to be approved by the department to train employees or contractors of an LMHA or a local behavioral health authority (LBHA), which is a managed care organization (MCO) (collectively LMHA, LBHA and MCO are referred to in this subchapter as LMHA) as MHFA trainers.

Mental health first aid is listed as an evidence-based practice on the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Registry of Evidence-Based Programs and Practices and as such extensive research has been conducted to document the effectiveness of this intervention. As a result of these rules, a group of certified trainers will be available to the LMHAs who will provide training to educators, thereby increasing the exposure of school aged children to professionals trained and certified in the provision of MHFA.

### SECTION-BY-SECTION SUMMARY

Section 412.1 describes the subchapter's purpose in setting out the requirements for providing MHFA training.

Section 412.2 sets forth the subchapter's application to providers of MHFA training.

Section 412.3 sets forth the definitions that are used in the subchapter. Definitions that are proposed include the terms "department," "local mental health authority," "local behavioral health authority," "educator," "managed care organization," and "mental health first aid."

Section 412.4 sets forth the requirements for any person to receive department approval to provide training in MHFA to employees or contractors of LMHAs.

Section 412.5 sets forth the requirements for the LMHAs to ensure fidelity to the department-approved model and to ensure contractors provide MHFA training to educators and non-educators consistent with the MHFA protocols in §412.4.

### FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that the proposed rules will have no direct adverse economic impact on small businesses

or micro-businesses. This was determined by interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules have direct application only to LMHAs, none of which meet the definition of small or micro-businesses under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

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

There may be costs associated with the staff and contractor training requirements to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

### PUBLIC BENEFIT

In addition, Mr. Maples has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to provide LMHAs with standards for certifying staff and contractors as trainers of MHFA and establishes the criteria for training educators in MHFA within their service areas maximizing the number of youth in schools exposed to educators trained in the MHFA protocols.

### REGULATORY ANALYSIS

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

### TAKINGS IMPACT ASSESSMENT

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

### PUBLIC COMMENT

Comments on the proposal may be submitted to Lloyd Shangreaux, Children's Mental Health Program Services, Department of State Health Services, Mail Code 2091, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 206-5970 or by email to [MHSARules@dshs.state.tx.us](mailto:MHSARules@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

### LEGAL CERTIFICATION

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

### STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by LMHA and their subcontractors; Health and Safety Code, §1001.202, which requires that rules be adopted to establish requirements for a person to be approved by the department to train employees or contractors of LMHAs as MHFA trainers; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect Government Code, §531.0055; and Health and Safety Code, §534.058 and §1001.075.

§412.1. Purpose.

The purpose of this subchapter is to set forth the standards and provide the criteria for mental health prevention training provided to local mental health authorities (LMHAs) and the local behavioral health authority (LBHA), which is a managed care organization (MCO) (collectively LMHA, LBHA and MCO are referred to in this subchapter as LMHAs), their respective contractors, and educators located within the LMHA's service area, as required by Texas Health and Safety Code, Chapter 1001, Subchapter H, §§1001.201 - 1001.206.

§412.2. Application.

This subchapter applies to local mental health authorities and local behavioral health authorities.

§412.3. Definitions.

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

(1) Department--The Department of State Health Services (DSHS).

(2) Local mental health authority (LMHA)--An entity designated as the local mental health authority by the department in accordance with the Texas Health and Safety Code, §533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority.

(3) Local behavioral health authority (LBHA)--An entity designated as a local behavioral health authority by the department in accordance with Texas Health and Safety Code, §533.0356.

(4) Educator--A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B, specifically; a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor.

(5) Managed care organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the department.

(6) Mental health first aid (MHFA)--The assistance provided to a person who is developing a mental health issue or who is experiencing a mental health crisis until appropriate professional treatment is received or until the crisis resolves.

§412.4. Mental Health First Aid Training Protocols.

(a) Any person approved to train LMHA employees or contractors as MHFA trainers shall be qualified to provide training in:

(1) the potential risk factors and warning signs for various mental illnesses, including depression, anxiety, trauma, psychosis, eating disorders, substance abuse disorders, and self-injury;

(2) the prevalence of various mental illnesses in the United States and the need to reduce the stigma associated with mental illness;

(3) an action plan used by employees or contractors that involves the use of skills, resources, and knowledge to assess a situation and develop and implement an appropriate intervention to assist a person experiencing a mental health crisis to obtain appropriate, professional care; and

(4) the evidence-based professional, peer, social, and self-help resources available to help individuals with mental illness.

(b) All persons or entities that train LMHA employees or contractors as MHFA trainers shall be certified by an authority of:

(1) MHFA-USA;

(2) MHFA-Australia; or

(3) other entity(ies) approved by the department.

§412.5. Local Mental Health Authority Responsibilities.

(a) The LMHA is responsible for ensuring their contractors provide MHFA training to educators and non-educators consistent with the MHFA protocol. The LMHA shall ensure that training is taught without modification, substitution or subtraction of the MHFA-USA or MHFA-Australia, as applicable, content or format unless authorized by the department-approved training entities set forth in §412.4(b) of this title (relating to Mental Health First Aid Training Protocols).

(b) The LMHA is responsible for ensuring their contractors comply with the provisions of this subchapter and applicable provisions of the contract between the department and the LMHA.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

Department of State Health Services

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



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 2. SPORTS AND EVENTS TRUST FUND

##### SUBCHAPTER A. MAJOR EVENTS TRUST FUND

###### 34 TAC §§2.100 - 2.104, 2.106, 2.107

The Comptroller of Public Accounts proposes amendments to §2.100, concerning Definitions; §2.101, concerning Eligibility;



§2.102, concerning Request to Establish a Trust Fund; §2.103, concerning Reporting; and §2.104, concerning Reimbursement. The comptroller also proposes new §2.106, concerning Event Support Contracts, and §2.107, concerning Allowed and Disallowed Costs.

Amendments to §2.100 will modify the definitions of the terms "event support contract," "event," "highly competitive selection process," "requestor," and "site selection organization" and add new definitions for the terms "cost," "direct cost," "local share," "privately owned property," "proof of payment," "publicly owned property," "significantly lower," and "travel." The definition of event is amended to add the Academy of Country Music Awards, the National Cutting Horse Association Triple Crown, and a national political convention of the Republican National Committee or the Democratic National Committee as added by Senate Bill 309, 82nd Legislature, 2011. The definition of event is also amended to clarify that a game of the National Collegiate Athletic Association Bowl Championship Series or its successor or a postseason playoff or championship game qualifies as an event. These amendments are necessary to implement provisions of Senate Bill 398, 83rd Legislature, 2013 and Senate Bill 309, 82nd Legislature, 2011.

Amendments to §2.101 provide that an event scheduled to be held one time each year or for a period of years under an event support contract may be eligible for participation in the Major Events Trust fund if other criteria are met. New subsection (a) adds criteria that the site selection organization select a site in Texas as the sole site of the event or as the sole site of the event in a region composed of this state and an adjoining state. Subsection (a)(4) adds as a criterion a determination by the comptroller that the incremental increase in tax receipts must equal or exceed \$1 million for the event. The proposed amendments create subsection (b) to provide that a requesting municipality and/or county cannot simultaneously apply for the Major Events Trust Fund program and the Events Trust Fund program for the same event.

Amendments to §2.102(f) provide that a request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not earlier than one year and not later than 45 days before the date the event begins.

Amendments to §2.103(a) provide that after the conclusion of an event, a requestor must provide an attendance certification within 14 days after the last day of the approved event which includes the total number of attendees and the number of non-Texas resident attendees, along with the source for such numbers. Under subsection (a)(2) a requestor must provide within 90 days, additional information including financial information that the comptroller considers necessary to evaluate the success of the trust fund program. The comptroller may also request information the comptroller needs in order to comply with the reporting requirements in Article 5190.14, Section 5A(w).

Amendments to §2.104 change the section title from Reimbursement to Disbursements for Event Costs. The proposed amendment to subsection (a) clarifies that disbursements from the trust fund shall be used to finance direct costs of the event, including the improvement of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract; paying the principal of and interest on notes issued by an endorsing municipality or endorsing county under Texas Civil Statutes, Article 5190.14, Section 5A(g); and conducting an event in this state in accordance with the event support contract.

The proposed amendment to subsection (b) substitutes the term "requestor" for "site selection organization" and clarifies that disbursements from the trust fund may not be used to make payments to a requestor or any other entity that are not directly attributable to allowable costs. Under this subsection, disbursements are subject to verification or audit prior to or after payment by the comptroller to ensure compliance with the subsection. The proposed amendment to subsection (c) provides that no later than the date of the event, the requestor shall submit to the comptroller a complete and fully executed copy of the event support contract, any contract amendments and incorporated documentation; and documentation affirming the participation of the local organizing committee, if one exists. Subsection (e) is amended to generally change references to "reimbursement" to "disbursements" and to change references to "expenses" to "costs." Subsection (e)(4) is amended to provide that a disbursement request letter must contain copies or specifications for any publications, printed materials, signage or advertising cost included in the disbursement request. Subsection (e)(5) and (6) also require that a disbursement request letter contain a detailed list presented in the form prescribed by the comptroller of costs included in the request, copies of the requestor's invoices, receipts, contracts, proof of payment if payment has been made by the requestor, and other documents supporting the costs included in the disbursement request. Subsection (e)(7) adds a requirement that if a requestor seeks disbursement for expenses incurred by another entity, a disbursement request letter must contain copies of the invoice(s) sent by the entity to the requestor for the expenses and proof of the requestor's payment if the payment has been made. Subsection (e)(8) is amended to add a requirement that for a request submitted by a local organizing committee, a disbursement request letter must contain documentation showing the prior approval of the disbursement request by each contributing endorsing municipality and/or endorsing county. Subsection (e)(9) is amended to require that a disbursement request letter contain a statement indicating whether any information provided to the comptroller is confidential and exempt from public disclosure. Subsection (e)(10) adds a requirement that a disbursement request letter contain a copy of any financial report the requestor is required to submit to the site selection organization. Subsection (e)(11) adds a requirement that a disbursement request letter contain the name and contact information of the requestor's officer or employee and any external designee or representative who may be contacted regarding the disbursement request. Subsection (f) is amended to provide that funds in the trust fund must be fully expended within one year of the date the first disbursement request is received by the comptroller unless an extension is granted by the comptroller. After this period, the comptroller shall return the local share of any unexpended balances in the trust fund to the respective endorsing municipality and/or endorsing county. Prior to the end of this period, the comptroller may return any local share remaining unexpended in the trust fund upon request by an endorsing municipality and/or endorsing county, upon determining that the event is ineligible under this subchapter, or after the payment of all costs is completed. Subsection (g) is amended to add language that the comptroller may request justification regarding any costs submitted for reimbursement. New subsection (h) describes the circumstances in which the comptroller will not consider a disbursement request, including but not limited to, situations where reimbursement for costs belonging to another entity are requested, if the request is submitted more than one year after the end date of the event, if the request is not supported by an event support contract, or does not include all event costs being sought by

the requestor. New subsection (i) provides that each disbursement request must be accompanied by a certification completed by each endorsing municipality or endorsing county. The certification must be in the form prescribed in the subsection and be signed by an authorized official. An endorsing municipality or county may not delegate to another person its obligation to sign the certification. New subsection (j) provides that a disbursement made from the trust fund by the comptroller in satisfaction of a requestor's obligation shall be satisfied proportionately from the state and local share in the trust fund in the proportion of 6.25:1 of state funds to local share notwithstanding any agreements to the contrary made by a requestor. New subsection (k) provides that the comptroller shall not make any disbursements for event costs until all reporting requirements under §2.103(a) are satisfied. New subsection (l) provides that if the actual total non-Texas resident attendance at the event is significantly lower than the pre-event estimate, as determined by the comptroller, the fund shall be reduced according to the attached chart. New subsection (m) provides that §2.104 applies to a disbursement request that is submitted to the comptroller on or after the date upon which this rule becomes effective. However, subsection (m) does not apply to §2.104(l) relating to a reduction in funds available for disbursement based on lower attendance.

New §2.106 provides that in considering whether to make a disbursement from the trust fund, the comptroller may not consider a contingency clause in an event support contract as relieving a requestor's obligation to pay a cost under the contract. Subsection (b) also provides that the event support contract must specify which goods, services, fixtures, equipment, facility or other property improvements or temporary maintenance are required to conduct the event in order for the comptroller to make a disbursement for a cost, unless the cost falls under subsection (c). Additionally, this new section provides that the comptroller will not consider event support contract terms which are overly broad in nature, and gives examples. Subsection (c) provides that the comptroller may consider making a disbursement for a requirement that is implied in each event support contract related to the health and safety of citizens or certain animals, and gives examples of such expenses. Subsection (d) provides that the comptroller may require a requestor to explain or provide proof of any cost. Subsection (e) provides that the comptroller will make a disbursement only for direct costs related to soliciting the event, executing the event support contract, planning for or conducting the event, or determining the event's attendance and economic impact.

New §2.107(a) adds language listing costs which are supportive of the trust fund program goals and are generally allowable, including but not limited to construction costs, hosting fees, performance bonds and improvements to publicly owned property, and advertising the event. Subsection (b) adds language which provides that disbursements for certain costs are prohibited regardless of their inclusion in an event support contract, including but not limited to gifts, grants, alcoholic beverages, prizes, personal items or expenses, entertainment, certain types of awards, and travel expenses unrelated to professional service contracts. Subsection (c) provides that the comptroller may deny a disbursement for any event, cost, expense or obligation the comptroller deems unnecessary, fiscally irresponsible, or not supportive of program objectives. Subsection (d) adds language to provide that subsections (a) and (b) apply to a disbursement request for an event whose event support contract was fully executed on or after the date upon which this rule becomes effective.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules 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 rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the requirements and procedures regarding the Major Events Trust Fund program and making the rules consistent with recent changes in law. The proposed amendments 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 rules.

Comments on the proposals may be submitted to Robert Wood, Director, Local Government Assistance and Economic Development Division, at robert.wood@cpa.state.tx.us or at P.O. Box 13528 Austin, Texas 78711.

The amendments and new sections are proposed pursuant to Texas Revised Civil Statutes Annotated, Article 5190.14, Section 5A(v) which allows the comptroller to adopt rules to implement the provisions of VTCS, Article 5190.14, Section 5A.

The amendments and new sections implement VTCS, Article 5190.14, Section 5A, as amended by Senate Bill 1678, 83rd Legislature, 2013; Senate Bill 398, 83rd Legislature, 2013; and Senate Bill 309, 82nd Legislature, 2011.

#### §2.100. Definitions.

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

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Cost--A requestor's expenses and obligations required to attract, secure, and conduct an event under the event support contract net of revenues remitted to or due to the requestor for the same specific expense or obligation.

(3) Direct costs--Any cost that is incurred only because of soliciting, planning for, or conducting the event.

(4) ~~[(2)]~~ Endorsing county--A county that contains a site selected by a site selection organization for one or more events, or a county that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the comptroller; and

(C) is a party to an event support contract.

(5) ~~[(3)]~~ Endorsing municipality--A municipality that contains a site selected by a site selection organization for one or more events, or a municipality that:

(A) does not contain a site selected by a site selection organization for an event;

(B) is included in the market area for the event as designated by the comptroller; and

(C) is a party to an event support contract.

(6) ~~[(4)]~~ Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract executed by a local organizing committee,

an endorsing municipality or an endorsing county and a site selection organization. The term does not include a request for bid, request for proposal, bid response, or a selection letter from a site selection organization except as those documents may be incorporated by reference into the event support contract.

(7) ~~[(5)]~~ Event--A Super Bowl, a National Collegiate Athletic Association Final Four tournament game, the National Basketball Association All-Star Game, the National Hockey League All-Star Game, the Major League Baseball All-Star Game, a game of the National Collegiate Athletic Association Bowl Championship Series or its successor or a National Collegiate Athletic Association Division I Football Bowl Subdivision postseason playoff or championship game, a World Cup Soccer game, the World Games, a national collegiate championship of an amateur sport sanctioned by the national governing body of the sport that is recognized by the United States Olympic Committee, an Olympic activity, including a Junior or Senior activity, training program, or feeder program sanctioned by the United States Olympic Committee's Community Olympic Development Program, the Breeders' Cup World Championships, ~~[or]~~ a Formula One automobile race, the Academy of Country Music Awards, the National Cutting Horse Association Triple Crown, or a national political convention of the Republican National Committee or the Democratic National Committee. The term includes any activities related to or associated with the event.

(8) ~~[(6)]~~ Highly competitive selection process--A process in which the requestor shall document that the site selection organization[:]

~~[(A)]~~ has historically considered sites for the event outside of Texas on a competitive basis and intends to do so in the future.[:]

~~[(B)]~~ shall not select more than one site in Texas after considering one or more sites that are not located in Texas; and

~~[(C)]~~ shall not select the site for the event more than one time in a calendar year.}]

(9) ~~[(7)]~~ Local organizing committee--A nonprofit corporation or its successor in interest that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(10) Local share--The contribution to the fund made by or on behalf of an endorsing municipality or endorsing county.

(11) ~~[(8)]~~ Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(12) Privately owned property--Any property other than supplies that is not publicly owned property.

(13) Proof of payment--An official banking statement or other official banking document that reflects the transmission, transfer, or payment of funds from the requestor related to an event, which may be redacted of information related to transactions and balances not pertaining to the event, and which must be redacted of all information that is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552).

(14) Publicly owned property--Any real or personal property that is wholly owned by or between the endorsing municipality, endorsing county, or the State of Texas that is used in preparation for or to conduct an event. The term includes property that is owned by an institution of higher education as defined in Education Code, §61.003.

(15) ~~[(9)]~~ Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting participation in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively or in conjunction with a local organizing committee.

(16) Significantly lower--Actual attendance at an event is considered significantly lower than estimated attendance when the difference is 15% or greater.

(17) ~~[(10)]~~ Site selection organization--This term has the same meaning assigned by Article 5190.14, Section 5A(a)(5). ~~[The National Football League, the National Collegiate Athletic Association, the National Basketball Association, the National Hockey League, Major League Baseball, the Federation Internationale de Football Association (FIFA), the International World Games Association, the United States Olympic Committee or the national governing body of a sport that is recognized by the United States Olympic Committee, the National Thoroughbred Racing Association, Formula One Management Limited, or the Federation Internationale de l'Automobile.]~~

(18) Travel--Includes lodging, mileage, rental car expense, airfare, and meals that are incurred while a person travels.

(19) ~~[(11)]~~ Trust fund--The Major Events Trust Fund.

(20) ~~[(12)]~~ Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.101. Eligibility.

(a) An event is eligible for participation in the trust fund program only if:

(1) a site selection organization selects a site in Texas for the event to be held one time or, for an event scheduled to be held each year for a period of years under an event support contract, one time each year for the period of years, after considering, through a highly competitive process, one or more sites that are not located in this state;

(2) a site selection organization selects a site in this state as:

(A) the sole site for the event; or

(B) the sole site for the event in a region composed of this state and one or more adjoining states;

(3) ~~[(2)]~~ the event will not be held more than once a calendar year in Texas; and

(4) the comptroller determines that the incremental increase in tax receipts equals or exceeds \$1 million for the event, provided that for an event scheduled to be held each year for a period of years under an event support contract, the incremental increase in tax receipts shall be calculated as if the event did not occur in the prior year.

~~[(3)]~~ the site selection is done through a highly competitive selection process.}]

(b) A requesting municipality and/or county cannot simultaneously apply for the Major Events Trust Fund program and the Events Trust Fund program for the same event.

§2.102. Request to Establish a Trust Fund.

(a) A request for participation in the trust fund program must contain:

(1) a letter from the municipality or county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(2) a letter from the site selection organization selecting the site in Texas; and

(3) an economic impact study or other data sufficient for the comptroller to make the determination of the incremental increase in tax revenue associated with hosting the event in Texas, including a listing of any data for any related activities.

(b) The economic impact study and other data submitted must contain detailed information on the direct expenditures and direct impact data for the endorsing municipality or endorsing county hosting the event and for the requested market area. Any other data or information in the study addressing the indirect or induced impact of the event must be stated separately from the direct impact data such that the data for each can be easily distinguished.

(c) The request for participation and the economic impact report should propose the requestor's desired market area and include information to support the choice of market area. The comptroller shall make the final determination establishing the market area. An endorsing municipality or endorsing county that has been selected as the site for the event must be included in the market area for the event.

(d) A list of all related event activities proposed to be included in the trust fund estimate must include data for each activity, such as projected attendance figures, ticket sales, or any production or expenditure information related to the activity.

(e) The comptroller is not required to review or act on a request for participation that does not contain all items in subsections (a) - (d) of this section.

(f) A request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not earlier than one year and not later than 45 days [three months] before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) All requests must be submitted to: Deputy Comptroller, Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774.

(h) The comptroller shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the comptroller receives the completed request for participation and related information.

### §2.103. Reporting.

(a) After the conclusion of an event, a requestor must provide certain information related to the event to the comptroller, including: such as attendance figures, financial information, or other public information held by the requestor that the comptroller considers necessary to evaluate the success of the trust fund program.]

(1) within 14 days after the last day of the approved event, an attendance certification signed by the person who signed the original letter requesting participation in the trust fund program under §2.102(a)(1) of this title (relating to Request to Establish a Trust Fund), or his/her successor. The certification must include:

(A) the estimated number of attendees at the approved event that are not residents of Texas;

(B) total actual attendance at the event; and

(C) the source for such numbers;

(2) within 90 days, additional information including financial information, or other public information held by the requestor that the comptroller considers necessary to evaluate the success of the trust fund program; and

(3) any information the comptroller finds necessary to comply with the reporting requirements in Article 5190.14, Section 5A(w).

(b) Information provided under subsection (a) of this section, should only be provided if the requestor considers the information to be public.

### §2.104. Disbursements for Event Costs [Reimbursement].

(a) Disbursements [Reimbursement payments] from the trust fund shall be used to finance direct costs of the approved event related to:

(1) applying or bidding for selection as the site of an event in this state;

(2) [making the preparations necessary and desirable for the conduct of an event in this state, including] the construction, improvement, or renovation of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract; [and]

(3) paying the principal of and interest on notes issued by an endorsing municipality or endorsing county under Texas Civil Statutes, Article 5190.14, Section 5A(g); or

(4) [(3)] preparing for and conducting an event in this state in accordance with the event support contract.

(b) Disbursements [Reimbursement payments] from the trust fund may not be used to make payments to a requestor [site selection organization] or any other entity that are not directly attributable to allowable costs described in subsection (a) of this section. Disbursements [Payments to a site selection organization or any other entity] are subject to verification or audit prior to or after payment by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor shall submit to the comptroller:

(1) a complete and fully executed copy of the event support contract, any amendment to the contract, and any incorporated [related] documentation; [and]

(2) documentation affirming the participation of the local organizing committee, if one exists; and

(3) [(2)] if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be allocated [disbursed] to an endorsing municipality or endorsing county, the request must be submitted to the comptroller no later than the date of the event, with a proposed local share [funds] withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller form AP-152 Texas Application for Payee Identification Number for each endorsing municipality, endorsing county or local organiz-

ing committee (as designated by an endorsing municipality or endorsing county) receiving disbursements [reimbursement] directly from the comptroller;

(2) the amount to be disbursed [reimbursed];

(3) a general explanation of the costs [expenses] the disbursement request [reimbursement] represents;

(4) copies or specifications for any publications, printed materials, signage, or advertising cost included in the disbursement request; [a statement that the money was not used to solicit the relocation of a professional sports franchise located in the state;]

(5) information indicating whether payment will be made by direct deposit or by warrant;]

(6) [(6)] a detailed list presented in the form prescribed by the comptroller of costs included in the request [expenditures for reimbursement];

(7) [(7)] copies of the requestor's invoices, receipts, contracts, proof of payment if payment has been made by the requestor, and other documents supporting the costs included in the disbursement request [for expenditures];

(8) if a requestor seeks disbursement for expenses incurred by another entity because of an obligation specified in the event support or event related service contract, copies of the invoice(s) sent by the entity to the requestor for the expenses, and proof of the requestor's payment if the payment has been made;

(9) for a request submitted by a local organizing committee, documentation showing the prior approval of the disbursement request by each contributing endorsing municipality and/or endorsing county; [supporting documentation showing payment of invoices; and]

(10) a [signed] statement indicating whether any information provided to the comptroller is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552), including the legal citation showing the exemption claimed; [that all payroll expenditures submitted for reimbursement have been paid.];

(11) a copy of any financial report the requestor is required to submit to the site selection organization under the event support contract unless a specific exemption is granted by the comptroller; and

(12) the name and contact information of the requestor's officer or employee and any external designee or representative who may be contacted regarding the disbursement request.

(f) Funds in the trust fund must be fully expended within one year of the date the first disbursement request is received by the comptroller unless an extension is granted by the comptroller. After this one year period and any extension period, the comptroller shall return the local share of any unexpended balances in the trust fund to the respective endorsing municipality and/or endorsing county in proportion to their initial contribution, regardless of the source of the local share. Prior to the end of this one year period plus any extension granted, the comptroller may return any local share remaining unexpended in the trust fund upon request by an endorsing municipality and/or endorsing county, upon determining ineligibility to receive funding under this subchapter, or after the payment of all eligible costs is completed. [The comptroller shall return any local funds remaining unexpended in the trust fund after the reimbursement of expenditures is completed to an endorsing municipality and/or endorsing county in proportion to their initial contribution to the fund.];

(g) The comptroller may request supporting documentation or justification regarding any costs [expenditures] submitted for reimbursement.

(h) The comptroller will not consider a disbursement request that:

(1) is not signed by a requestor;

(2) requests reimbursement for cost invoices and obligations belonging to any entity other than a requestor as a party to an event support contract;

(3) is submitted to the comptroller more than one year after the end date of the event unless the comptroller has granted an extension to the requestor;

(4) is not supported by an event support contract; or

(5) does not include all event costs being sought by the requestor for disbursement, unless the comptroller, at its sole discretion, determines that an exception is necessary.

(i) Each disbursement request must be accompanied by a certification completed by each endorsing municipality or endorsing county.

(1) The certification required by this subsection must be in the following form: Regarding the events trust fund disbursement request in the amount of \$ \_\_\_\_\_, for the \_\_\_\_\_ {name of event} I, \_\_\_\_\_ {name of authorized official}, approve of each cost submitted for disbursement from the trust fund. I certify that each cost is necessary to fulfill obligations under the event support contract. I certify that the funds will not be used for the purpose of soliciting the relocation of a professional sports franchise located in this state; and that no costs sought for disbursement from the trust fund are also being reimbursed by another entity. I also certify that I have the authority to make this certification statement on behalf of the municipality or county and that I take responsibility for the disbursement being requested.

(2) The certification must be signed by an official of the endorsing municipality or endorsing county who is authorized to bind the municipality or county.

(3) An endorsing municipality or endorsing county may not delegate to another person or entity its obligation to approve a disbursement request or sign the certification required by this subsection.

(j) A disbursement made from the trust fund by the comptroller in satisfaction of a requestor's obligation shall be satisfied proportionately from the state and local share in the trust fund in the proportion of 6.25:1 of state funds to local share notwithstanding any agreements to the contrary made by a requestor.

(k) The comptroller shall not make any disbursements for event costs until all reporting requirements under §2.103(a) of this title (relating to Reporting) are satisfied.

(l) If the actual number of attendees at the approved event is significantly lower than the pre-event estimate, as determined by the comptroller, the amount of the fund available for disbursement shall be reduced according to the attached chart. Any reduction in the fund under this subsection shall be done in the same proportion as the statutory contribution rate between state funds and the local share (6.25:1). The percentage of fund reduction may be decreased based on a written explanation by the requestor to the comptroller, along with the actual attendance numbers. The requestor must submit their written explanation to the comptroller no later than 14 days after the last day of the approved event.

Figure: 34 TAC §2.104(l)

(m) This section applies to a disbursement request that is submitted to the comptroller on or after the date upon which this rule becomes effective. A disbursement request submitted to the comptroller prior to the effective date is governed by the rule that was in effect on the date the request was submitted. This subsection does not apply to subsection (l) of this section, relating to a reduction to the fund available for disbursement based on lower attendance.

§2.106. Event Support Contracts.

(a) In considering whether to make a disbursement from the trust fund, the comptroller may not consider a contingency clause in an event support contract as relieving a requestor's obligation to pay a cost under the contract.

(b) The event support contract must specify which types of goods, services, fixtures, equipment, facility or other property improvements or temporary maintenance are required to conduct the event in order for the comptroller to make a disbursement for a cost, unless the cost falls under subsection (c) of this section. The comptroller will not consider for payment event support contract terms which are overly broad or too general in nature, such terms include:

(1) blanket "catch-all" terms, such as "any necessary fixtures or improvements,"

(2) references in terms such as "etc." or "miscellaneous" or "as needed" or "other;" and

(3) terms that reference the comptroller's decision making authority or that reference the statute, such as "any expense allowed by the comptroller" or "any expense allowed by statute."

(c) The comptroller may consider making a disbursement for a requirement that is implied in each event support contract for the endorsing municipality or endorsing county to provide for the health and safety of its citizens during the event and of the people or animals attending or participating in the event. The following types of expenses are examples of health and safety expenses that the comptroller may consider to be required for the conduct of any event:

(1) water necessary to prevent dehydration;

(2) security;

(3) professional fire marshal or engineer requirements for event facilities and other event related property or equipment;

(4) portable restrooms, trash receptacles, and other types of sanitation necessities;

(5) shade;

(6) lighting;

(7) traffic planning and management;

(8) severe weather planning and mitigation;

(9) way-finding signage or staff;

(10) barriers;

(11) seating;

(12) permits and professional or consulting services for acquiring permits;

(13) professional stand-by services, such as stand-by medical services;

(14) "Americans with Disabilities Act" (ADA) accommodations and compliance;

(15) command center expenses;

(16) credentials; and

(17) overtime and equipment needed for police, fire, and other emergency operations staff to host a safe event.

(d) The comptroller may require a requestor to provide an explanation or proof of necessity for any cost submitted for consideration.

(e) Regardless of event support contract terms or health and safety necessities, the comptroller will consider making a disbursement only for direct costs resulting from the requestor:

(1) soliciting and being awarded the approved event;

(2) executing the event support contract;

(3) planning for or conducting the event in accordance with the event support contract; or

(4) estimating or determining the approved event's attendance and economic impact.

§2.107. Allowed and Disallowed Costs.

(a) The following costs are supportive of the trust fund program goals and are generally allowable:

(1) construction, renovations, improvements, fixtures, temporary maintenance, and financing costs for event sites that are:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.106 of this title (relating to Event Support Contracts); and

(C) within the designated market area;

(2) fees charged by a site selection organization which must be paid as a prerequisite to holding an event, including hosting fees, sanction fees, participation fees, or bid fees;

(3) performance bonds or insurance required for hosting the event;

(4) improvements or maintenance to publicly owned real property impacted by the conduct of the event, such as a public roadway, that is:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.106 of this title; and

(C) within the designated market area;

(5) security, safety, traffic, or public health related costs that are:

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.106 of this title; and

(C) within the designated market area;

(6) water or food necessary to the health or safety of people or animals involved in hosting or participating in the event;

(7) event facility costs, including:

(A) cost to rent a facility if the requestor is required to provide the facility at no cost under the event support contract, or the cost equivalent to a rental credit if the requestor is required to provide the credit under the event support contract;

(B) the purchase or rental of furnishings and equipment:

(i) permissible under §2.106 of this title; and

(ii) not limited or prohibited by subsection (b) of this section;

(8) a requestor's staffing costs permissible under §2.106 of this title which include:

(A) hourly pay or overtime earned for hours specifically attributable to meeting objectives in §2.106 of this title for the approved event;

(B) compensation of staff hired or contracted specifically to meet objectives described in §2.106 of this title for the approved event; and

(C) occur prior to or during the event, unless the staff is assisting with the post-event economic impact study;

(9) a requestor's legal or professional service costs not prohibited under subsection (b)(5) of this section for:

(A) preparing a pre-event or post-event economic impact study;

(B) preparing event-related documents;

(C) fulfilling specific obligations of the event support contract; or

(D) consulting on soliciting, preparing for, or hosting the event;

(10) market-area transportation and/or parking services for the event that are net of revenues earned from providing the transportation and/or parking;

(11) temporary signs and banners, when required by the event support contract;

(12) advertising for the event which:

(A) occurs prior to the event;

(B) includes the event name and date, or event name and location; and

(C) are the requestor's obligations in the event support contract;

(13) promotional items that:

(A) are created specifically to advertise the event;

(B) are distributed prior to the event to members of the general public from locations likely to attract out-of-state visitors to the event; and

(C) meet the requirements of paragraph (12) of this subsection;

(14) costs attributable to inclement weather occurring immediately before, during, or immediately after an event, except costs of damages;

(15) any other direct costs resulting from requirements of the event support contract that are not prohibited in subsection (b) of this section; and

(16) other costs determined by the comptroller to meet program objectives.

(b) Disbursements for the following costs are prohibited, regardless of their inclusion in an event support contract:

(1) any tax listed in Texas Revised Civil Statutes, Article 5190.14, Section 5A;

(2) gifts of any kind, including tips, gratuities, or honoraria;

(3) grants to any person, entity, or organization;

(4) alcoholic beverages;

(5) costs related to representing any entity, including a requestor, in front of:

(A) the legislature for any reason; or

(B) the comptroller for the purpose of seeking reimbursement from the trust fund;

(6) expenses related to:

(A) gaming;

(B) raffles;

(C) prizes, cash, gift cards, pre-paid service certificates, or any other award or competitive performance compensation that is not a trophy, ribbon, medal, or sash required to be provided by the event support contract; or

(D) giveaways that do not meet the requirements of subsection (a)(13) of this section;

(7) expenses for religious items or religious publications of any kind, regardless of the religion or type of event;

(8) personal items and services;

(9) entertainment, hospitality, appearance fees, or "VIP" expenses;

(10) food not specifically authorized in subsection (a)(6) of this section;

(11) an individual's travel expenses not specifically authorized in subsection (a)(10) of this section, or that are not a component of a service contract under subsection (a)(9) of this section;

(12) reimbursement of any particular expense or obligation that was recouped or that will be recouped from another entity or from revenue earned under the event support contract that is identified to cover the cost;

(13) reimbursement of any cost not incurred, such as for lost profit or for an exchange-in-kind or product;

(14) damages of any kind;

(15) any amount in excess of 5.0% of the cost of any improvement made or fixture added to a site that is privately owned property where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events;

(16) privately owned property not authorized under paragraph (15) of this subsection;

(17) costs that are not direct costs; or

(18) any expenses which an endorsing municipality or endorsing county finds are unnecessary for the planning or conduct of an event.

(c) The comptroller may deny a disbursement for any event, cost, expense, or obligation the comptroller deems unnecessary, fiscally irresponsible, or not supportive of program objectives.

(d) Subsections (a) and (b) of this section apply to a disbursement request for an event whose event support contract was fully executed on or after the date upon which this rule becomes effective. A disbursement request submitted to the comptroller for an event whose event support contract was fully executed prior to the effective date is governed by the rule that was in effect on the date the event support contract was fully executed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2014.

TRD-201400732

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 6, 2014

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



### 34 TAC §2.105

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

The Comptroller of Public Accounts proposes the repeal of §2.105, concerning events generating over \$15 million in state and local tax revenue. The section is being repealed pursuant to Senate Bill 1678, Section 4, 83rd Legislature, 2013, which repealed VACS, Article 5190.14, Section 5A, Subsections (r), (s), (t), and (u), which specifically dealt with advanced funding of events which generate over \$15 million in state and local tax revenue.

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

Mr. Heleman also has determined the repeal would benefit the public by reflecting the most recent changes to state law regarding the Major Event Trust Fund Program. The proposed repeal 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 repeal.

Comments on the proposed rule may be submitted to Robert Wood, Director, Local Government Assistance and Economic Development Division at [robert.wood@cpa.state.tx.us](mailto:robert.wood@cpa.state.tx.us) or at P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed pursuant to VTCS, Article 5190.14, Section 5A(v), which allows the comptroller to adopt rules to implement the provisions of VTCS, Article 5190.14, Section 5A.

The repeal implements Senate Bill 1678, Section 4, 83rd Legislature, 2013.

*§2.105. Events Generating Over \$15 Million in State and Local Tax Revenue.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2014.

TRD-201400733

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 6, 2014

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



## SUBCHAPTER B. EVENTS TRUST FUND

### 34 TAC §§2.200 - 2.206

The Comptroller of Public Accounts proposes amendments to §2.200, concerning Definitions, §2.201, concerning Eligibility, §2.202, concerning Request to Establish a Trust Fund, §2.203, concerning Reporting, §2.204, concerning Disbursements for Event Costs, §2.205, concerning Allowed and Disallowed Costs, and adding new §2.206, concerning Event Support Contracts.

Amendments to §2.200 will modify the definitions of the terms "event support contract," "highly competitive selection process," and add new definitions for the terms "direct cost," "nonsporting event," "privately owned property," "proof of payment," "publicly owned property," "significantly lower," and "sporting event."

Amendments to §2.201(a) provide that an event scheduled to be held one time each year or for a period of years under an event support contract may be eligible for participation in the Events Trust Fund program if other criteria are met. This same amendment more closely conforms the eligibility criteria in the rule to the statute. The proposed amendments create subsection (c) to provide that during any 12-month period, endorsing municipalities and/or endorsing counties are limited to ten trust fund requests for an event with an incremental tax increase of less than \$200,000, no more than three of such events may be non-sporting events.

Amendments to §2.202(a) add a requirement that the economic impact study for a particular event must include an estimate of the number of attendees to this event who are not residents of Texas. Certain information required to be included in the economic impact study under subsection (b) is now moved to subsection (a).

Amendments to §2.203(a) provide that after the conclusion of an event, a requestor must provide an attendance certification within 14 days after the last day of the approved event which includes the total number of attendees and the number of non-Texas resident attendees, along with the sources for such numbers. The amendment to subsection (b) provides that upon request, the requestor must provide information to assist the comptroller in conducting the study required in Senate Bill 1678, Section 5, 83rd Legislature, 2013. The amendment to subsection (c) specifies that the comptroller may promulgate forms to collect required information. Subsection (d) regarding the effective date of this section is proposed to be deleted because it is no longer necessary.

Amendments to §2.204(a) clarify that disbursements from the trust fund shall be used to finance direct costs of the event, including the improvement of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract, and in addition paying the principal of and interest on notes issued by an endorsing municipality or endorsing county under Texas Civil Statutes, Article 5190.14, Section 5C(g). The proposed amendment to subsection (b) substitutes the term "requestor" for "site selection organization" and clarifies that disbursements from the trust fund may not be used to make



payments to a requestor or any other entity that are not directly attributable to allowable costs described in subsection (a). The proposed amendment to subsection (c)(3) changes the phrase "local funds withholding plan" to "local share withholding plan" to keep the language in the rule consistent. Subsection (e)(4) is amended to specify that a disbursement request letter must contain copies or specifications for any printed materials or signage included in the disbursement request. Subsection (e) is amended to add new paragraph (7) which adds a requirement that if a requestor seeks disbursement for expenses incurred by another entity because of an obligation specified in the event support contract, the disbursement request letter must contain copies of the invoice(s) sent by the entity to the requestor for the expenses and proof of the requestor's payment if the payment has been made. Subsection (e) is amended to add new paragraph (11) which adds a requirement that a disbursement request letter contain the name and contact information of the requestor's officer or employee and any external designee or representative who may be contacted regarding the disbursement request. Subsection (f) is amended to clarify that the comptroller would refund local share upon determining that an event is ineligible under this subchapter. Subsection (h)(2) is amended to change a reference to "cost" to "invoices and obligations" as a matter of clarification. Subsection (h)(5) is added to state that the comptroller will not consider a disbursement request that does not include all event costs being sought by the requestor for disbursement, unless the comptroller determines that an exception is necessary. Subsection (k) is amended to clarify that it is inapplicable to a reduction in funds available for disbursement based on lower attendance under subsection (l). New subsection (l) provides that no disbursements shall be made from the trust fund for event costs until reporting requirements under §2.203(a) are complied with. Additionally, this new subsection provides that if the actual number of attendees at the approved event who are not residents of Texas is significantly lower than the pre-event estimate of that number, as determined by the comptroller, the amount of the fund available for disbursement shall be reduced according to the included chart.

Amendments to §2.205(a) amend a list of which costs are supportive of the trust fund program goals and are generally allowable. The proposed amendments to subsection (a)(1) adds renovations, improvements, fixtures, temporary maintenance for public event sites that meet certain criteria. Subsection (a)(4) is amended to allow for payment for temporary maintenance to publicly owned real property impacted by the conduct of the event, such as a public roadway that meets certain criteria. The amendment to subsection (a)(5) adds to the list of allowable items safety and traffic costs directly incurred as a result of the event that meet certain criteria. The amendments to subsection (a)(7)(A) adds as an allowable expense the cost equivalent to a rental credit if the requestor is required to provide the credit under the event support contract. The amendments to subsection (a)(7)(B) keeps intact a current allowable expense for the purchase or rental of furnishings and equipment but adds that the expense must meet certain criteria and deletes references that are no longer necessary to certain operational costs. The amendments to subsection (a)(8) clarify which types of a requestor's staffing costs are eligible direct costs. Subsection (a)(12) is amended to clarify that advertising costs are allowable if the advertising occurs prior to the event and provides an option to include either the location or the date with the event name in order to be considered an eligible cost. Subsection (a)(13) is amended to specify that promotional items used for event advertising must be distributed prior to the event and meet other crite-

ria. Subsection (b) generally lists what types of disbursements are prohibited under the program regardless of their inclusion in an event support contract. Subsection (b)(2) is amended to clarify that disbursements for honoraria are prohibited. Subsection (b)(6)(C) is added to provide that disbursements for prizes, cash, gift cards, pre-paid service certificates, or any other award or competitive performance compensation that is not a trophy, ribbon, medal or sash required to be provided by the event support contract are prohibited. Subsection (b)(9) is amended to provide that disbursements for appearance fees are prohibited. Subsection (b)(15) is added to provide that disbursements for any cost or expense of or related to constructing an arena, stadium, or convention center are prohibited. Subsection (b)(16) is added to provide that disbursements for any cost or expense related to conducting usual and customary maintenance of a facility are prohibited. Subsection (b)(17) is added to provide that disbursements for any amount in excess of five percent of the cost of any improvement made or fixture added to a site that is privately owned property where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events are prohibited. These amendments are made to implement Senate Bill 1678, 83rd Legislature, 2013. Subsection (b)(18) is added to provide that disbursements for privately owned property not authorized under subsection (b)(17) are prohibited. Also subsection (b)(19) is added to provide that disbursements for costs that are not direct costs are prohibited.

New §2.206 provides that in considering whether to make a disbursement from the trust fund, the comptroller may not consider a contingency clause in an event support contract as relieving a requestor's obligation to pay a cost under the contract. This new section also provides that the event support contract must specify which goods, services, fixtures, equipment, facility or other property improvements or temporary maintenance are required to conduct the event in order for the comptroller to make a disbursement for a cost, unless the cost falls under subsection (c). Additionally, this new section provides that the comptroller will not consider event support contract terms which are overly broad or too general in nature, such as those terms provided in subsection (b). Subsection (c) also provides that the comptroller may consider making a disbursement for a requirement that is implied in an event support contract related to health and safety, and gives examples of such expenses. Additionally, this new section provides that regardless of event support contract terms or health and safety requirements, the comptroller will consider making a disbursement only for direct costs.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules 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 rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the requirements and procedures regarding the Events Trust Fund program. The proposed amendments 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 rules.

Comments on the proposals and new section may be submitted to Robert Wood, Director, Local Government Assistance and Economic Development Division, at robert.wood@cpa.state.tx.us or at P.O. Box 13528 Austin, Texas 78711.

The proposals are pursuant to Texas Revised Civil Statutes Annotated Article 5190.14, Section 5C(p), which allows the comptroller to adopt rules to implement the provisions of VTCS, Article 5190.14, Section 5C.

The amendments and new section implement VTCS, Article 5190.14, Section 5C, as amended by Senate Bill 1678, 83rd Legislature, 2013.

§2.200. *Definitions.*

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

(1) Comptroller--The Comptroller of Public Accounts for the state of Texas.

(2) Cost--A requestor's expenses and obligations required to attract, secure, and conduct an event under the event support contract net of revenues remitted to or due to the requestor for the same specific expense or obligation.

(3) Direct cost--Any cost that is incurred only because of soliciting, planning for, or conducting the event.

(4) ~~[(3)]~~ Endorsing county--A county that contains within its boundaries at the time of application to the site selection organization a site selected by a site selection organization for one or more events.

(5) ~~[(4)]~~ Endorsing municipality--A municipality that contains within its boundaries at the time of application to the site selection organization a site selected by a site selection organization for one or more events.

(6) ~~[(5)]~~ Event support contract--A joinder undertaking, joinder agreement (as defined in Texas Civil Statutes, Article 5190.14, §1) or a similar contract executed [signed] by a local organizing committee, an endorsing municipality or an endorsing county and a site selection organization. The term does not include a request for bid, request for proposal, bid response or a selection letter from a site selection organization except as those documents may be incorporated by reference into the event support contract.

(7) ~~[(6)]~~ Event--An event or a related series of events held in this state for which a local organizing committee, endorsing county, or endorsing municipality seeks approval from a site selection organization to hold the event at a site in this state. The term includes any activities related to or associated with the event.

(8) ~~[(7)]~~ Highly competitive selection process--A process in which the requestor shall document that the site selection organization[;]

~~[(A)]~~ has historically considered sites for the event outside of Texas on a competitive basis and intends to do so in the future.[;]

~~[(B)]~~ shall not select more than one site in Texas or an adjoining state; and]

~~[(C)]~~ shall not select the site for the event more than one time in a calendar year.}

(9) ~~[(8)]~~ Local organizing committee--A nonprofit corporation or its successor that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(10) ~~[(9)]~~ Local share--The contribution to the fund made by or on behalf of an endorsing municipality or endorsing county.

(11) ~~[(10)]~~ Market area--The geographic area within which the comptroller determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event and related activities.

(12) Nonsporting event--An event other than a sporting event.

(13) Privately owned property--Any property other than supplies that is not publicly owned property.

(14) Proof of payment--An official banking statement or other official banking document that reflects the transmission, transfer, or payment of funds from the requestor related to an event, which may be redacted of information related to transactions and balances not pertaining to the event, and which must be redacted of all information that is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552).

(15) Publicly owned property--Any real or personal property that is wholly owned by or between the endorsing municipality, endorsing county, or the State of Texas that is used in preparation for or to conduct an event. The term includes property that is owned by an institution of higher education as defined in Education Code, §61.003.

(16) ~~[(11)]~~ Requestor--An endorsing county, endorsing municipality or local organizing committee that is requesting to participate in the trust fund program. The term includes one or more endorsing counties and/or one or more endorsing municipalities acting collectively or in conjunction with a local organizing committee.

(17) Significantly lower--Actual attendance at an event is considered significantly lower than estimated attendance when the difference is 15% or greater.

(18) ~~[(12)]~~ Site selection organization--An entity that conducts or considers conducting an eligible event in this state.

(19) Sporting event--An event whose primary purpose, as determined by the comptroller, is the conduct of recreational or competitive athletic or physical activities, including individual, team, equestrian, or automotive competitions.

(20) ~~[(13)]~~ Travel--Includes lodging, mileage, rental car expense, airfare, and meals that are incurred while a person travels.

(21) ~~[(14)]~~ Trust fund--The Events Trust Fund.

(22) ~~[(15)]~~ Trust fund estimate--The comptroller's determination of the incremental increase in tax receipts eligible to be deposited in the trust fund for an eligible event.

§2.201. *Eligibility.*

(a) An event is eligible for participation in the trust fund program only if:

(1) a site selection organization selects a site in Texas for the event to be held one time or, for an event scheduled to be held each year for a period of years under an events support contract, one time each year for the period of years, after considering, through a highly competitive selection process, one or more sites that are not located in this state;

(2) a site selection organization selects a site in this state as:

(A) the sole site for the event; or

(B) the sole site for the event in a region composed of this state and one or more adjoining states; and

(3) [(2)] the event will not be held more than once a calendar year in Texas or an adjoining state.[: and]

[(3) the site selection is done through a highly competitive selection process.:]

(b) No joinder agreement, joinder undertaking, event support contract, interlocal agreement, or any other type of agreement may require, obligate or compel the comptroller to perform any act not required by law. The comptroller is not responsible or obligated to enforce or compel the performance of any party subject to the terms of any joinder agreement, joinder undertaking, event support contract, interlocal agreement, or any other agreement to which an endorsing municipality, endorsing county or local organizing committee is a party.

(c) During any 12-month period, endorsing municipalities and/or endorsing counties are limited to 10 trust fund requests for an event with an incremental tax increase of less than \$200,000, as determined by the comptroller. For events with an incremental tax increase of less than \$200,000, as determined by the comptroller, no more than three events may be non sporting events.

#### *§2.202. Request to Establish a Trust Fund.*

(a) A request for participation in the trust fund program must contain:

(1) a letter from the municipality or county requesting participation in the trust fund program and signed by a person authorized to bind the municipality or county;

(2) a letter from the site selection organization on organization letterhead selecting the site in the endorsing municipality or endorsing county;

(3) an economic impact study or other data sufficient for the comptroller to make the determination of the incremental increase in tax revenue associated with hosting the event in Texas including a listing of any data for any related activities. The economic impact study and other data submitted must:[:]

(A) include an estimate of the number of attendees to this event who are not residents of Texas;

(B) include detailed information on the direct expenditures and direct impact data for the endorsing municipality or endorsing county hosting the event and for the requested market area if that data or information affects the amounts requested under the trust fund; and

(C) include the source of the information provided in the study;

(4) a Request Worksheet to Establish an Events Trust Fund form and any attachments; and

(5) an affidavit provided by each endorsing municipality, endorsing county, local organizing committee, and any party providing economic data to the agency in support of the request, attesting to the accuracy of the information provided to the best knowledge of the affiant.

(b) [The economic impact study and other data submitted must contain detailed information on the direct expenditures and direct impact data for the endorsing municipality or endorsing county hosting the event and for the requested market area if that data or information

affects the amounts requested under the Events Trust Fund. The study must identify the source of the information.] Any other data or information in the study addressing the indirect or induced impact of the event must be stated separately from the direct impact data such that the data for each can be easily distinguished.

(c) The request for participation and the economic impact report should propose the requestor's desired market area and include information to support the choice of market area. The comptroller shall make the final determination establishing the market area. An endorsing municipality or endorsing county that has been selected as the site for the event must be included in the market area for the event.

(d) A list of all related event activities proposed to be included in the trust fund estimate must include data for each activity, such as projected attendance figures, ticket sales, or any production or expenditure information related to the activity.

(e) The comptroller is not required to review or act on a request for participation that does not contain all items in subsections (a) - (d) of this section.

(f) A request for participation, including a request for determination of the amount of incremental increase in tax receipts must be submitted not later than four months before the date the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) All requests must be submitted to: Deputy Comptroller, Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774.

(h) The comptroller shall make a determination of the amount of incremental increase in tax receipts not later than the 30th day after the date the comptroller receives the completed request for participation and related information.

(i) If the comptroller determines that the event (including any activities related to or associated with the event) has been held in the state within the previous five years, the estimated incremental increase in tax revenue will be reduced according to the following percentages, subject to adjustment to the extent the comptroller determines is necessary to reflect changes to the character, timing or location of the event: Figure: 34 TAC §2.202(i) (No change.)

(j) This section applies to a request to establish a trust fund that is submitted to the comptroller on or after the date upon which this rule becomes effective. A request submitted to the comptroller prior to the effective date is governed by the rule that was in effect on the date the request was submitted.

#### *§2.203. Reporting.*

(a) Within 14 days after [~~After~~] the last day [~~conclusion~~] of the approved [~~an~~] event, a requestor must provide an attendance certification signed by the person who signed the original letter requesting participation in the trust fund program under §2.202(a)(1) of this title (relating to Request to Establish a Trust Fund), or his/her successor. The certification must include:

(1) the estimated number of attendees at the approved event that are not residents of Texas;

(2) total actual attendance at the event; and

(3) the source for such numbers.

(b) Upon request, the requestor must provide additional information related to the event, including [~~attendance figures,~~] hotel information, financial information, or other public information held by the requestor that the comptroller considers necessary to evaluate the success of the trust fund program, including information to assist the comptroller in conducting the study required in Senate Bill 1678, Sec-

tion 5, 83rd Legislature, 2013. [If available, information should include:]

- ~~[(1) total attendance at the event;]~~
- ~~[(2) total ticket sales for the event;]~~
- ~~[(3) number and price of tickets sold to out of state purchasers; and]~~
- ~~[(4) any other public information requested by the comptroller.]~~

~~[(b) Information provided under subsection (a) of this section, should only be provided if the requestor considers the information to be public.]~~

(c) The comptroller may promulgate forms [a ~~form~~] to collect information required under this section.

~~[(d) This section applies to a request to establish a trust fund that is submitted to the comptroller on or after the date upon which this rule becomes effective. A request submitted to the comptroller prior to the effective date is governed by the rule that was in effect on the date the request was submitted.]~~

#### §2.204. *Disbursements for Event Costs.*

(a) Disbursements from the trust fund shall be used to finance direct costs of the approved event related to:

- (1) applying or bidding for selection as the site of an event in this state;
- (2) the construction, improvement, or renovation of facilities to the extent authorized by law that are directly attributable to fulfilling obligations of the event support contract; ~~[and]~~
- (3) paying the principal of and interest on notes issued by an endorsing municipality or endorsing county under Texas Civil Statutes, Article 5190.14, Section 5C(g); or
- (4) ~~[(3)]~~ preparing for and conducting an event in this state in accordance with the event support contract.

(b) Disbursements from the trust fund may not be used to make payments to a requestor [~~site selection organization~~] or any other entity that are not directly attributable to allowable costs described in subsection (a) of this section. Disbursements are subject to verification or audit prior to or after payment by the comptroller to ensure compliance with this subsection.

(c) No later than the date of the event, the requestor shall submit to the comptroller:

- (1) a complete and fully executed copy of the event support contract, any amendment to the contract, and any incorporated documentation;
- (2) documentation affirming the participation of the [a] local organizing committee, if one exists; and
- (3) if an endorsing municipality or endorsing county requests to have the local tax funds withheld from amounts that would otherwise be allocated to an endorsing municipality or endorsing county, the request must be submitted to the comptroller no later than the date of the event with a proposed local share [~~funds~~] withholding plan. The comptroller will make every effort to accommodate the proposed plan, but retains the authority to withhold at a different rate as necessary.

(d) No later than 90 days after the event, endorsing municipalities and endorsing counties without a proposed local funds withholding plan shall submit an amount up to or equal to the calculated local share.

(e) A disbursement request letter must contain:

(1) the Texas Taxpayer Identification Number or a comptroller Form AP-152 Texas Application for Payee Identification Number for each endorsing municipality, endorsing county or local organizing committee (as designated by an endorsing municipality or endorsing county) receiving disbursements directly from the comptroller;

(2) the amount to be disbursed;

(3) a general explanation of the costs the disbursement request represents;

(4) copies or specifications for any publications, printed materials, signage, or advertising cost included in the disbursement request;

(5) a detailed list presented in the form prescribed by the comptroller of costs included in the request;

(6) copies of the requestor's invoices, receipts, contracts, proof of payment if payment has been made by the requestor, and[-~~er~~] other documents supporting the costs included in the disbursement request;

(7) if a requestor seeks disbursement for expenses incurred by another entity because of an obligation specified in the event support or event related service contract, copies of the invoice(s) sent by the entity to the requestor for the expenses and proof of the requestor's payment if the payment has been made;

(8) ~~[(7)]~~ for a request submitted by a local organizing committee, documentation showing the prior approval of the disbursement request by each contributing endorsing municipality and/or endorsing county;

(9) ~~[(8)]~~ a statement indicating whether any information provided to the comptroller is confidential and exempt from public disclosure under the Texas Public Information Act (Government Code, Chapter 552), including the legal citation showing the exemption claimed; ~~[and]~~

(10) ~~[(9)]~~ a copy of any financial report the requestor is required to submit to the site selection organization under the event support contract unless a specific exemption is granted by the comptroller; ~~and~~[-]

(11) the name and contact information of the requestor's officer or employee and any external designee or representative who may be contacted regarding the disbursement request.

(f) Funds in the trust fund must be fully expended within one year of the date the first disbursement request is received by the comptroller unless an extension is granted by the comptroller. After this one year period and any extension period, the comptroller shall return the local share of any unexpended balances in the trust fund to the respective endorsing municipality and/or endorsing county in proportion to their initial contribution, regardless of the source of the local share. Prior to the end of this one year period plus any extension granted, the comptroller may return any local share remaining unexpended in the trust fund upon request by an endorsing municipality and/or endorsing county or after the payment of all costs is completed.

(g) The comptroller may request supporting documentation or justification regarding any costs submitted for reimbursement.

(h) The comptroller will not consider a disbursement request that:

- (1) is not signed by a requestor;

(2) requests reimbursement for invoices and obligations [costs] belonging to any entity other than a requestor as a party to an event support contract;

(3) is submitted to the comptroller more than 180 days after the end date of the event unless the comptroller has granted an extension to the requestor; [ or]

(4) is not supported by an event support contract; or[-]

(5) does not include all event costs being sought by the requestor for disbursement, unless the comptroller, at its sole discretion, determines that an exception is necessary.

(i) Each disbursement request must be accompanied by a certification completed by each [the] endorsing municipality or endorsing county.

(1) The certification required by this subsection must be in the following form: Regarding the events [Events] trust fund disbursement request in the amount of \$ \_\_\_\_\_, for the \_\_\_\_\_ {name of event} I, \_\_\_\_\_ {name of authorized official}, approve of each cost submitted for disbursement from the trust fund. I certify that each cost is necessary to fulfill obligations under the event support contract. I certify that the funds will not be used for the purpose of soliciting the relocation of a professional sports franchise located in this state; and that no costs sought for disbursement from the trust fund are also being reimbursed by another entity. I also certify that I have the authority to make this certification statement on behalf of the municipality or county and that I take responsibility for the disbursement being requested.

(2) The certification must be signed by an official of the endorsing municipality or endorsing county who is authorized to bind the municipality or county.

(3) An endorsing municipality or endorsing county may not delegate to another person or entity its obligation to approve a disbursement request or sign the certification required by this subsection.

(j) A disbursement made from the trust fund by the comptroller in satisfaction of a requestor's obligation shall be satisfied proportionately from the state and local share [revenue] in the trust fund in the proportion of 6.25:1 of state funds to local share notwithstanding any agreements to the contrary made by a requestor.

(k) This section applies to a disbursement request that is submitted to the comptroller on or after the date upon which this rule becomes effective. A disbursement request submitted to the comptroller prior to the effective date is governed by the rule that was in effect on the date the request was submitted. This subsection does not apply to subsection (l) of this section relating to a reduction to the fund available for disbursement based on lower attendance.

(l) No disbursements for event costs shall be made from the trust fund until reporting requirements under §2.203(a) of this title (relating to Reporting) are complied with. If the actual number of attendees at the approved event is significantly lower than the pre-event estimate, as determined by the comptroller, the amount of the fund available for disbursement shall be reduced according to the attached chart. Any reduction in the fund under this subsection shall be done in the same proportion as the statutory contribution rate between state funds and the local share (6.25:1). The percentage of fund reduction may be decreased based on a written explanation by the requestor to the comptroller, along with the actual attendance numbers. The requestor must submit their written explanation to the comptroller no later than 14 days after the last day of the approved event.

Figure: 34 TAC §2.204(l)

§2.205. *Allowed and Disallowed Costs.*

(a) The following costs are supportive of the trust fund program goals and are generally allowable:

(1) construction, renovations, improvements, fixtures, temporary maintenance, and financing costs for public event sites that are: [facilities;]

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.206 of this title (relating to Event Support Contracts); and

(C) within the designated market area;

(2) fees charged by a site selection organization which must be paid as a prerequisite to holding an event, including hosting fees, sanction fees, participation fees, or bid fees;

(3) performance bonds or insurance required for hosting the event;

(4) improvements or temporary maintenance to publicly owned real property impacted by the conduct of the event, such as a public roadway that is: [within the designated market area that is ordered after the event support contract is signed and that is directly related to hosting the event;]

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.206 of this title; and

(C) within the designated market area;

(5) security, safety, traffic, or public health related costs that are: [directly incurred as a result of the event;]

(A) not limited or prohibited by subsection (b) of this section;

(B) permissible under §2.206; of this title; and

(C) within the designated market area;

(6) water or food necessary to the health or safety of people or animals involved in hosting or participating in the event;

(7) event facility costs, including:

(A) cost [expense] to rent a facility if the requestor is required to provide the facility at no cost under the event support contract, or the cost equivalent to a rental credit if the requestor is required to provide the credit under the event support contract;

(B) the purchase or rental of furnishings and equipment: [specifically required to be provided under the event support contract and that is ordered after the event support contract is signed;]

(i) permissible under §2.206 of this title; and

(ii) not limited or prohibited by subsection (b) of this section;

[(C) operational costs of the endorsing municipality's or endorsing county's facility that:

{(i) are directly related to preparing for or hosting the event;}

{(ii) are net of any rent or rent related proceeds that is received as a result of hosting the event;}

{(iii) occur after the event support contract is signed; and]

~~[(iv)]~~ occur prior to or during the event unless the cost specifically relates to restoring the facility to its original configuration or cleaning the facility after the event occurs.}]

(8) a [A] requestor's staffing costs permissible under §2.206 of this title, which include [directly attributable to planning for or hosting the event that]:

(A) hourly pay or overtime earned for hours specifically attributable to meeting objectives in §2.206 of this title for the approved event [are directly related to preparing for or hosting the event];

(B) compensation of staff hired or contracted specifically to meet objectives described in §2.206 of this title for the approved event; and [are for a service that is not usually performed by the staff other than because the event is occurring];

~~[(C)]~~ occur after the event support contract is signed; and]

~~[(C)]~~ ~~[(D)]~~ occur prior to or during the event, unless the staff is assisting with the post-event economic impact study;[-]

(9) a requestor's legal or professional service costs not prohibited under subsection (b)(5) of this section for:

(A) preparing a pre-event or post-event economic impact study;

(B) preparing event-related documents;

(C) fulfilling specific obligations of the event support contract; or

(D) consulting on soliciting, preparing for, or hosting the event;

(10) market-area transportation and/or parking services for the event that are net of revenues earned from providing the transportation and/or parking;

(11) temporary signs and banners, when required by the event support contract;

(12) advertising for the event which:

(A) occurs prior to the event;

(B) ~~[(A)]~~ includes [include] the event name and[-] date, or event name and location; and

(C) ~~[(B)]~~ are the requestor's obligations in [required by] the event support contract;

(13) promotional items that:

(A) are created specifically to advertise the event;

(B) are distributed prior to the event to members of the general public from locations likely to attract out-of-state visitors to the event; and

(C) meet the requirements of paragraph (12) of this subsection; [include the event name, date, and location; and]

~~[(D)]~~ are required by the event support contract;]

(14) costs attributable to inclement weather occurring immediately before, during, or immediately after an event, except costs of damages;

(15) any other direct costs resulting from requirements of the event support contract that are not prohibited in subsection (b) of this section; and

(16) other costs determined by the comptroller to meet program objectives.

(b) Disbursements for the following costs are prohibited, regardless of their inclusion in an event support contract:

(1) any tax listed in Texas Revised Civil Statutes, Article 5190.14, Section 5C;

(2) gifts of any kind, including tips, ~~[or]~~ gratuities, or honoraria;

(3) grants to any person, entity or organization;

(4) alcoholic beverages;

(5) costs related to representing any entity, including a requestor, in front of:

(A) the legislature for any reason; or

(B) the comptroller for the purpose of seeking reimbursement from the trust fund;

(6) expenses related to:

(A) gaming;

(B) raffles; ~~[or]~~

~~[(C)]~~ prizes, cash, gift cards, pre-paid service certificates, or any other award or competitive performance compensation that is not a trophy, ribbon, medal, or sash required to be provided by the event support contract; or

~~[(D)]~~ ~~[(E)]~~ giveaways that do not meet the requirements of subsection (a)(13) of this section;[-]

(7) expenses for religious items or religious publications of any kind, regardless of the religion or type of event;

(8) personal items and services;

(9) entertainment, hospitality, appearance fees, or "VIP" expenses;

(10) food not specifically authorized in subsection (a)(6) of this section;

(11) an individual's travel expenses not specifically authorized in subsection (a)(10) of this section, or that are not a component of a service contract under subsection (a)(9) of this section;

(12) reimbursement of any particular expense or obligation that was recouped or that will be recouped from another entity or from revenue earned under the event support contract that is identified to cover the cost;

(13) reimbursement of any cost not incurred, such as for lost profit or for an exchange-in-kind or product;

(14) damages of any kind; ~~[and]~~

(15) any cost or expense of or related to constructing an arena, stadium, or convention center;

(16) any cost or expense related to conducting usual and customary maintenance of a facility;

(17) any amount in excess of five percent of the cost of any improvement made or fixture added to a site that is privately owned property where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events;

(18) privately owned property not authorized under paragraph (17) of this subsection;

(19) costs that are not direct costs; or

(20) [(45)] any expenses which an endorsing municipality or endorsing county finds are unnecessary for the planning or conduct of an event.

(c) The comptroller may deny a disbursement for any event, cost, expense or obligation the comptroller deems unnecessary, fiscally irresponsible, or not supportive of program objectives.

(d) Subsections (a) and (b) of this section apply to a disbursement request for an event whose event support contract was fully executed on or after the date upon which this rule becomes effective. A disbursement request submitted to the comptroller for an event whose event support contract was fully executed prior to the effective date is governed by the rule that was in effect on the date the event support contract was fully executed.

§2.206. Event Support Contracts.

(a) In considering whether to make a disbursement from the trust fund, the comptroller may not consider a contingency clause in an event support contract as relieving a requestor's obligation to pay a cost under the contract.

(b) The event support contract must specify which types of goods, services, fixtures, equipment, facility, or other property improvements or temporary maintenance are required to conduct the event in order for the comptroller to make a disbursement for a cost, unless the cost falls under subsection (c) of this section. The comptroller will not consider event support contract terms which are overly broad or too general in nature, such terms include:

(1) blanket "catch-all" terms, such as "any necessary fixtures or improvements";

(2) references in terms such as "Etc." or "miscellaneous" or "as needed" or "other"; or

(3) terms that reference the comptroller's decision making authority or that reference the statute, such as "any expense allowed by the comptroller" or "any expense allowed by statute".

(c) The comptroller may consider making a disbursement for a requirement that is implied in each event support contract for the endorsing municipality or endorsing county to provide for the health and safety of its citizens during the event and of the people or animals attending or participating in the event. The following types of expenses are examples of health and safety expenses that the comptroller may consider to be required for the conduct of any event:

(1) water necessary to prevent dehydration;

(2) security;

(3) professional fire marshal or engineer requirements for event facilities and other event related property or equipment;

(4) portable restrooms, trash receptacles, and other types of sanitation necessities;

(5) shade;

(6) lighting;

(7) traffic planning and management;

(8) severe weather planning and mitigation;

(9) way-finding signage or staff;

(10) barriers;

(11) seating;

(12) permits and professional or consulting services for acquiring permits;

(13) professional stand-by services, such as stand-by medical services;

(14) "Americans with Disabilities Act" (ADA) accommodations and compliance;

(15) command center expenses;

(16) credentials; and

(17) overtime and equipment needed for police, fire, and other emergency operations staff to host a safe event.

(d) The comptroller may require a requestor to provide an explanation or proof of necessity for any cost submitted for consideration.

(e) Regardless of event support contract terms or health and safety requirements, the comptroller will consider making a disbursement only for direct costs resulting from the requestor:

(1) soliciting and being awarded the approved event;

(2) executing the event support contract;

(3) planning for or conducting the event in accordance with the event support contract; or

(4) estimating or determining the approved event's attendance and economic impact.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 18, 2014.

TRD-201400734

Ashley Harden

General Counsel

Comptroller of Public Accounts

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



## CHAPTER 9. PROPERTY TAX ADMINISTRATION

### SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

#### 34 TAC §§9.1051 - 9.1055, 9.1057 - 9.1059

The Comptroller of Public Accounts proposes amendments to §9.1051, concerning definitions, §9.1052, concerning forms; §9.1053, concerning entity requesting agreement to limit appraised value and tax credit; §9.1054, concerning school district application review and agreement to limit appraised value; §9.1055, concerning comptroller application review and agreement to limit appraised value; §9.1057, concerning reports by comptroller; §9.1058, concerning miscellaneous provisions, and adding new §9.1059, concerning annual compliance review for qualifying jobs and penalties.

The comptroller proposes amending the title of Subchapter F to delete the reference to Tax Credits so that the new title of Sub-

chapter F is "Limitation on Appraised Value on Certain Qualified Properties". This amendment is proposed to implement provisions of House Bill 3390, 83rd Legislature, 2013, which repealed the authority to provide tax credits on qualified property as defined by Tax Code, Chapter 313.

The amendments to §9.1051, concerning definitions, will change the definitions of the terms local government assistance division or LGA, new job, qualified property, and substantive document; repeal the definition of tax credit settle up; and add new definitions for agreement holder, average weekly wage for manufacturing jobs, average weekly wage for non-qualifying job, first placed in service, new improvement, per capita income, strategic investment area, Texas Economic Development Act Agreement, Texas Priority Project, and unemployment. These amendments are deemed necessary to clarify existing guidelines and to implement provisions of House Bill 3390.

The amendments to §9.1052(a), concerning forms, deletes paragraph (2), Application for Tax Credit on Qualified Property and adds new paragraphs (3), (4), (5), and (6) to add forms for Job Creation Compliance, Biennial School District Cost Data Request, and a Texas Economic Development Act Agreement. These amendments are proposed to include forms deemed necessary to implement provisions of House Bill 3390.

The amendments to §9.1053, concerning entity requesting agreement to limit appraised value and tax credit, will change subsections (a), (b), (c), and (f), and delete subsection (g). The proposed amendments delete the reference to tax credits in the title of the section. The amendments to subsections (a), (b), and (c) make changes to the information that is required for an application, an amendment to the application, and an agreement for value limitation. The amendments to subsection (f) make changes to the provisions required to be in an agreement for value limitation. The amendments to subsections (a), (b), and (f) are deemed necessary to clarify existing guidelines and implement provisions of House Bill 3390. The amendment to subsection (c) is for the purpose of providing a mechanism to control the number of application amendments or supplements filed. The deletion of subsection (g) is because House Bill 3390 repealed the provisions of Tax Code, Chapter 313 that authorized tax credits.

The amendments to §9.1054, concerning school district application review and agreement to limit appraised value, will change subsections (a), (b), (c), (f), (g), (h), (i), and (j) and delete subsection (k). The amendments to subsections (a) and (b) are made to insure compliance with existing statutes. The amendments to subsection (c) make changes to the information that is required for an application for an agreement for value limitation that will be considered by school districts. The amendments to subsection (f) make changes to actions taken by the school district when it has received an application accompanied by a comptroller certificate for a limitation on appraised value. The subsection (g) is deleted and subsequent subsections are re-lettered. Re-lettered subsection (g) is further amended to make changes to the provisions required to be in an agreement for value limitation. The amendments re-designate the provisions of subsection (i) to be the provisions of subsection (h), which is then further amended to identify the school district's actions when the application requests a deferral of the qualifying time period. The amendments re-designate the provisions of subsection (j) to be subsection (i) and further amendments are proposed to include new reporting requirements for agreement holders to the school district. All of these amendments are deemed necessary to clarify existing

guidelines and implement provisions of House Bill 3390. Subsection (k) is deleted because House Bill 3390 repealed the provisions of Tax Code, Chapter 313 that authorized tax credits.

The amendments to §9.1055, concerning comptroller application review and agreement to limit appraised value, will change subsections (b), (c), (d), (e), (f), and (g). The amendments to subsection (b) reflect changes in how the comptroller will use certain information submitted in an application for value limitation. The amendments to subsection (c) are made to reflect the current process used by the comptroller regarding notification to an applicant regarding eligibility. The amendments to subsection (d) detail the information and considerations for the comptroller to determine whether to issue a certificate for a limitation on appraised value. The amendments to subsection (e) are made to reflect the authority of the comptroller to review agreements for limitation on appraised value. The amendments to subsections (f) and (g) are made to include the changes made to previous subsections. The amendments to subsections (b), (d), (e), (f), and (g) are deemed necessary to clarify existing guidelines and implement provisions of House Bill 3390. The amendment to subsection (c) is for the purpose of clarification.

The amendments to §9.1057, concerning reports by comptroller, will delete subsection (c) which relates to the reporting on tax credits. This amendment is deemed necessary to implement provisions of House Bill 3390 which repealed the provisions of Tax Code, Chapter 313 that authorized tax credits.

The amendment to §9.1058 adds new subsections (d) and (e) concerning miscellaneous provisions. New subsection (d) is added to identify the procedures for the comptroller to identify strategic investment areas as required by Tax Code, Chapter 313. New subsection (e) is added to reflect that applications for limitation on appraised value and agreements executed pursuant to the approved application will be governed by the statutes and applicable rules and guidelines in effect at the time the application is filed.

New §9.1059, concerning annual compliance review and penalties. This new section is proposed to provide the framework for the annual review to be conducted by the comptroller on agreement holders, the notices of adverse determinations that can be issued, the penalties that the comptroller can assess, and the provisions by which the agreement holder can seek redetermination and court review. This new section is deemed necessary to implement provisions of House Bill 3390.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules 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 rules are in effect, the public benefit anticipated as a result of enforcing the rules will be by improving the administration of local property valuation and taxation. The proposed amendments 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 rules.

Comments on the amendments and new section may be submitted to Robert Wood, Director, Economic Development and Analysis Division, at [Robert.wood@cpa.state.tx.us](mailto:Robert.wood@cpa.state.tx.us) or at P.O. Box 13528 Austin, Texas 78711.

The amendments and new section are proposed under Tax Code, §313.024 which authorizes the comptroller to prescribe



the application of limitation on appraised value, and §313.031 which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments and new section implement Tax Code, Chapter 313.

§9.1051. *Definitions.*

The following phrases, words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Tax Code, Chapter 313 and not defined in this subchapter shall have the meanings provided by Tax Code, Chapter 313.

(1) Agreement--The written agreement between the governing body of a school district and the approved applicant to implement a limitation on the appraised value for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property, required by Tax Code, §313.027(d).

(2) Applicant--An entity that has applied for a limitation on appraised value for school district maintenance and operations ad valorem property tax purposes on the entity's property as provided by Tax Code, Chapter 313.

(3) Application--An application for limitation of appraised value limitation for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property on the form adopted by reference in §9.1052 of this title (relating to Forms), the schedules attached thereto, and the documentation submitted by an entity for the purpose of obtaining an agreement for a limitation on appraised value from a school district.

(4) Application amendment--Information submitted by an applicant intended to be considered as part of or in support of the application that amends by replacing information that was previously submitted by applicant.

(5) Application supplement--Information submitted by an applicant intended to be considered as part of or in support of the application that has not been previously submitted.

(6) Approved applicant--An applicant whose application has been approved by a school district for a limitation on appraised value agreement according to the provisions of Tax Code, Chapter 313, including any assignees of that applicant.

(7) Application review start date--The later date of either the date on which the school district issues its written notice that an applicant has submitted a completed application or the date on which the comptroller issues its written notice that an applicant has submitted a completed application.

(8) Appraisal district--The county appraisal district that would appraise the property which is the subject of an application.

(9) Appraised value--The value of property as defined by Tax Code, §1.04(8).

(10) Completed application--An application in the form and number and containing all the information required pursuant to §9.1053 of this title (relating to Entity Requesting Agreement to Limit Appraised Value [and Tax Credit]) that has been determined by the school district and the comptroller to include all minimum requirements for consideration.

(11) Comptroller--The Texas Comptroller of Public Accounts or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of the comptroller.

(12) Entity--Any entity upon which a tax is imposed by Tax Code, §171.001 including a combined group as defined by Tax Code, §171.0001(7) or members of a combined group, provided however, an entity as defined herein does not include a sole proprietorship, partnership or limited liability partnership.

(13) Economic Development and Analysis [Local Government Assistance] Division or ED&A [LGA]--The [Local Government Assistance and ] Economic Development Division and Analysis Division of the comptroller's office, or the division of the comptroller's office responsible for the administration of Tax Code, Chapter 313, acting through the designated division director or a representative thereof.

(14) Non-qualifying [New] job--A position of employment to perform work:

(A) that includes at a minimum the following requirements;

(i) that did not exist on the land prior to the application review start date;

(ii) that is based on the qualified property;

(iii) that is in direct support of activity identified in Tax Code, §313.024(b);

(iv) for at least 1,600 hours a year; and

(v) ~~[(iv)]~~ over which the applicant has significant degree of control of:

(I) the creation of the job;

(II) the job description;

(III) the job characteristics or performance of the job through either a business, contractual or vendor relationship; and

~~[(v)]~~ is further defined by either subparagraphs (B) or (C) of this paragraph;

(B) is not a qualifying job as that term is defined in Tax Code, §313.021(b). ~~[that meets the requirements set forth in an agreement by the school district and the approved applicant that also identifies the number of hours necessary for the employment to be counted as a job; or]~~

~~[(C) if new job is not defined in the agreement, that is a permanent, full time position with an approved applicant, or a contractor of the approved applicant to perform work;]~~

~~[(i) for at least 1600 hours a year;]~~

~~[(ii) that has not been transferred from another part of the state; and]~~

~~[(iii) that has not been created to replace a previous employee.]~~

(15) Qualified investment--Property that meets the requirements of Tax Code, §313.021(1).

(16) Qualified property--Land, new building, or new improvement erected or affixed to the land after the application review start date, or eligible tangible personal property first placed in service after the application review start date that: [Property that]

(A) meets the requirements of Tax Code, §313.021(2), and that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, nuclear electric power generation, a Texas Priority

Project, or a computer center; [ that is used either as an integral part, or as a necessary auxiliary part, of the activity conducted by applicant in one of the foregoing industries.]

(B) is clearly distinguished from any existing property and clearly distinguished from any proposed property that is not a new improvement;

(C) is separate from, and not a component of, any existing property;

(D) if buildings or improvements, did not exist before the application review start date or if tangible personal property, was first placed in service after the application review start date;

(E) is not used to renovate, refurbish, upgrade, maintain, modify, improve, or functionally replace existing buildings or existing improvements;

(F) does not replace or modify existing buildings other than expansion of an existing building; and

(G) is not used solely for the transportation of product prior to the commencement, or subsequent to the completion, of an applicable qualifying activity described in subparagraph (A) of this paragraph.

(17) School district--A school district that has received an application for a limitation on appraised value pursuant to Tax Code, Chapter 313 or the designated representative of the school district acting on behalf of the school district.

(18) SOAH--State Office of Administrative Hearings.

(19) Substantive document--A document or other information or data in electronic media determined by the comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Tax Code, Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the school district and any subsequent amendments or assignments, any school district written finding or report filed with the comptroller as required under this subchapter, and any completed Annual Eligibility Report (Form 50-772) submitted to the comptroller[, and any application requesting school tax credits under Tax Code, §313.103].

(20) Agreement holder--An entity that has executed an agreement with a school district [~~Tax credit settle-up--The process by which tax credit amounts earned by an approved applicant which were not credited against taxes imposed during the value limitation period are credited against taxes imposed over a period not to exceed three years following the expiration of the value limitation~~].

(21) Average weekly wage for manufacturing jobs--Either the average weekly wage:

(A) for all jobs primarily engaged in activities described in Sectors 31 - 33 of the 2007 North American Industry Classification System in a county as identified by the Texas Workforce Commission's Quarterly Employment and Wages (QCEW) webpage at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>; or

(B) for all manufacturing jobs, as determined by data published annually by the Texas Workforce Commission for the purposes of Tax Code, Chapter 313 for each Council of Government Region, based on Bureau of Labor Statistics, Texas

Occupational Employment and Wages (OES) data, as it is posted at <http://www.tracer2.com/admin/uploadedPublications/COGWages.pdf>.

(22) Average weekly wage for non-qualifying jobs--The average weekly wage as identified by the Texas Workforce Commission Quarterly Employment and Wages (QCEW) average weekly wages for all private industries for the calendar year that is 4 quarters prior to the year for which the wages are being reported, as it is posted at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>.

(23) First placed in service--The first use of the property by the agreement holder.

(24) New improvement--A building, structure, or fixture that, after the application review start date:

(A) is erected on or affixed to land eligible to be qualified property; and

(B) is not erected or affixed as part of maintenance, renovation, refurbishment, improvement, modification, or upgrade of existing property, nor is newly added or proposed to be added property functionally replacing existing property, provided however that a proposed improvement may be considered a new improvement if it is an addition to an existing building that will contain new tangible personal property that did not exist before the application review start date.

(25) Per capita income--Per capita money income in the past 12 months as determined by the United States Census Bureau and reported at its website <http://quickfacts.census.gov/qfd/states/48000.html>.

(26) Strategic investment area--An area that is:

(A) a county within this state with unemployment above the state average and per capita income below the state average;

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or

(C) a defense economic readjustment zone designated under Government Code, Chapter 2310.

(27) Texas Economic Development Act Agreement--The form, adopted by reference in §9.1052 of this title, which provides a template for the terms of an agreement to implement a limitation on appraised value on property within a school district and that has the title Agreement For Limitation On Appraised Value Of Property For School District Maintenance And Operations Taxes.

(28) Texas Priority Project--A project on which the applicant commits to place in service qualified investment of more than \$1 billion during the qualifying time period, based on the comptroller review of the application submitted by the school district.

(29) Unemployment--The most recent calendar year unemployment rate, not seasonally adjusted, as determined by the Labor Market & Career Information Department (LMCI) of the Texas Workforce Commission and reported at its website <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Labforce>.

§9.1052. Forms.

(a) The comptroller adopts by reference the following forms:

(1) Application for Appraised Value Limitation on Qualified Property (Form 50-296A);

{(2) Application for Tax Credit on Qualified Property (Form 50-300);}

- (2) ~~[(3)]~~ Annual Eligibility Report (Form 50-772A); ~~[and]~~
- (3) ~~[(4)]~~ Biennial Progress Report for Texas Economic Development Act (Form 50-773A);~~[-]~~
- (4) Job Creation Compliance Report (Form 50-825);
- (5) Biennial School District Cost Data Request (CDR) (Form 50-287); and
- (6) Texas Economic Development Act Agreement (Form 50-286).

(b) Copies of the forms are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's web site, at <http://www.window.state.tx.us/taxinfo/proptax/hb1200/index.html>. Copies may also be requested by calling our toll-free number, (800) 252-9121.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

*§9.1053. Entity Requesting Agreement to Limit Appraised Value ~~[and Tax Credit]~~.*

(a) Initial application contents. To request a limitation on appraised value for school district maintenance and operations ad valorem tax purposes pursuant to Tax Code, Chapter 313, an applicant shall file a completed application with the school district in which the qualified property will be located.

(1) A completed application shall consist of, at a minimum, the following items:

(A) the comptroller's current application form and Schedules A1, A2 [A], B, C and D attached to the application form with all information boxes filled in with the information on which applicant intends to rely including but not limited to:

(i) a specific and detailed description of the proposed qualified property to which the appraised value limitation will apply sufficient to clearly distinguish the subject property from property to which the limitation does not apply and to establish that the property meets the criteria of qualified property pursuant to these rules and Tax Code, §313.021(2);

(ii) a specific and detailed description of the investment described in Tax Code, §313.021(1) that is proposed to be made in the property subject to the appraised value limitation and sound, good faith estimates of the dollar value of intended investment sufficient to establish that the investment meets minimum criteria for qualified investment pursuant to Tax Code, §313.023 or §313.053 if applicable, during the proposed qualifying [qualified] time period;

(iii) if the land upon which the qualified property will be located contains existing improvements or tangible personal property, a specific and detailed description of the tangible personal property, buildings, or permanent, non-removable building components (including any affixed to or incorporated into real property) on the land that is sufficient to distinguish existing property from the proposed new improvements and any proposed property that is not new improvements which may include maps, surveys, appraisal district values and parcel numbers, inventory lists, property lists, model and serial numbers of existing property, or other information of sufficient detail and description to locate all existing property within the boundaries of the real property which is subject to the agreement; provided however, that the date of appraisal shall be within 15 days

of the date the application is received by the school district [the total number of new jobs the applicant commits to create and maintain during the full term of the agreement and a schedule which identifies the estimated number of new jobs created and maintained in each year of the agreement];

(iv) the total number of any jobs related to construction or operation of the facility that the applicant chooses to disclose for the purpose of calculating the economic impact of the project;

(v) ~~[(iv)]~~ the total number of qualifying jobs the applicant commits to create and maintain during the full term of the agreement and a schedule which identifies the number of qualifying jobs created and maintained in each year of the agreement;

(vi) ~~[(v)]~~ the wages, salaries, and benefits applicant commits to provide for each qualifying job;

(vii) the total number of non-qualifying jobs the applicant estimates it will create and maintain during the full term of the agreement and a schedule which identifies the number of non-qualifying jobs created and maintained in each year of the agreement;

(viii) the average wages the applicant estimates it will provide for non-qualifying jobs;

(ix) ~~[(vi)]~~ a statement:

(I) that for the purposes of this statement, "payments to the school district" include any and all payments or transfers of things of value made to the school district or to any person or persons in any form if such payment or transfer of thing of value being provided is in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value; and

(II) as to whether:

(-a-) the amount of any and all payments or transfers made to the school district may result in payments that are or are not in compliance with Tax Code, §313.027(i); or

(-b-) as to whether the method for determining the amount may result in payments to the school district that are or are not in compliance with Tax Code §313.027(i); and

(x) ~~[(vii)]~~ a description of the real property on which the intended investment will be made, identified additionally by the county appraisal district parcel number;

(B) such other written documents containing information on which applicant relies to qualify for and obtain a limitation on appraised value pursuant to Tax Code, Chapter 313;

(C) such other written documents containing information reasonably requested by either the school district or the comptroller which shall be provided within 20 days of the date of the request, provided however the applicant may request up to 10 additional days to provide the requested information;

(D) information identifying the applicant, and if applicant is a combined group, identifying each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, by:

(i) official name, street address, city, county, state and mailing address, if different from the street address, of the official place of business of the applicant and, if the applicant is a combined group, of each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement;

(ii) designation of an authorized representative for the applicant and, if the applicant is a combined group, for each such

combined group's members that intend to own a direct interest in the property subject to the proposed agreement; and

(iii) for each authorized representative, and if the applicant is a combined group for each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, provide telephone number, email address, street address, city, county, state, and mailing address if different from the street address;

(E) the signature of applicant's authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application to the best knowledge and belief of applicant and its representative(s); ~~and~~

(F) the total application fee required by the school district with which the application will be filed; [-]

(G) a statement as to whether or not the project is an expansion of an existing operation on the land which will become qualified property, and if so, a description of the nature of the existing operation, and the nature of the expansion, including an explanation of how the expansion affects or interacts with current operations;

(H) a statement specifying the beginning date of the limitation period, which must be January 1 of the first tax year that begins after one of the following:

(i) the date of the completed application;

(ii) the date of the end of the qualifying time period, provided however that such date will begin no later than the beginning of the limitation period; or

(iii) the date commercial operations are to begin at the site of the project;

(I) a statement regarding the location and nature of other facilities that the applicant operates in the state, and a detailed description of any such facilities that will provide inputs to or use outputs from the project that is the subject of the application;

(J) a detailed description of any state and local incentives for which the applicant intends to apply; and

(K) any information that the applicant requests the comptroller to consider in making the determination under Tax Code, §313.026(c)(2) that the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in the state, which may include:

(i) other locations not in Texas that the applicant considered or is considering for the project;

(ii) capital investment and return on investment information in comparison with other alternative investment opportunities; or

(iii) information related to the applicant's inputs, transportation and markets.

(2) The completed application contents shall be provided in the following formats:

(A) one original hard copy of the completed application in a three ring binder with tabs separating each section of the documents submitted; and

(B) an ~~additional~~ electronically digitized copy, formatted in searchable pdf format or other format acceptable to the comptroller, certified by the applicant as containing the identical information, maps, and schedules as the original hard copy. The digitized copy shall include: [-]

(i) schedules A1, A2, B, C, and D in Microsoft Excel format; and

(ii) high-resolution maps and graphics (300 dpi or higher).

(3) The application shall be submitted in any manner acceptable to the comptroller.

(b) Optional application requests. An applicant may include in an application:

(1) a request that the school district waive the requirement of Tax Code, §313.021(2)(A)(iv)(b) or §313.051(b), whichever is applicable, to create new jobs. In order for a completed application to include a job waiver request, applicant shall submit:

(A) a specific request to waive the job requirement of the applicable Tax Code section included with the application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) separated and clearly marked within the application materials, documentation on which applicant intends to rely that demonstrates that the applicable jobs creation requirement of the applicable Tax Code section exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility of applicant that is described in the application; or

(2) a request to begin the qualifying time period on a date that is after the date that the application is approved. In order for a completed application to include a qualifying time period deferral request, applicant shall submit:

(A) specific information identifying the requested qualifying time period within an application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) all relevant economic information that is related to the impact of the investment during the proposed qualifying time period, the proposed limitation period, and a period of time after the limitation period considered appropriate by the comptroller.

(c) Application changes. At the request of the school district or the comptroller, or with the prior approval of the school district and the comptroller ~~[at its own discretion]~~, applicant may submit an application amendment or application supplement at any time after the submission of the initial application. In order to be considered as part of the application, the application amendment or supplement shall:

(1) be submitted in the same form or schedule and manner as the information was initially submitted or should have been initially submitted;

(2) include a date for the submission and a sequential number identifying the number of submissions made by applicant;

(3) ~~[if requested by the school district or comptroller,]~~ have the signature of the authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application amendment or supplement, as applicable, to the best knowledge and belief of applicant and its representative(s); and

(4) be submitted before the 120th day after the application was accepted by the school district or within another time period as provided in writing by ~~[the school district or]~~ the comptroller.

(d) Authorized representative(s). The person(s) identified in the application as applicant's authorized representative(s) shall serve as the person(s) to whom all correspondence and notifications from the school district and comptroller shall be sent. Notwithstanding subsection (c) of this section, applicant may change its authorized represen-

tative(s) if applicant submits to the school district and the comptroller a letter that provides the name of the new authorized representative(s), street and mailing address, telephone number, and official title, if any.

(e) Information confidentiality. At the time that applicant submits its application, application amendment, or application supplement, applicant may request that all or parts of such document not be posted on the internet and not otherwise be publicly released. In order to make such request, applicant shall:

(1) submit a written request that:

(A) specifically lists each document or portion of document and each entry in any form prescribed by the comptroller that applicant contends is confidential; and

(B) identifies specific detailed reasons stating why applicant believes each item listed should be considered confidential and identifies any relevant legal authority in support of the request;

(2) segregate the documents which are subject to the request from the other documents submitted with the application, application amendment, or application supplement that are not subject to the request; and

(3) adequately designate the documents subject to the request as "confidential."

(f) Continued eligibility for value limitation. In order to obtain and continue to receive a limitation on appraised value pursuant to Tax Code, Chapter 313, an applicant shall:

(1) have a completed application approved by the governing body of the school district in compliance with §9.1054(f) [~~or (g)~~] of this title (relating to School District Application Review and Agreement to Limit Appraised Value);

(2) at least 30 [~~40~~] days prior to the meeting at which the governing body of the school district is scheduled to consider the application, provide to the school district and the comptroller a Texas Economic Development Act Agreement with terms [~~an agreement~~] acceptable to the applicant that includes at a minimum:

(A) all Texas Taxpayer Identification Numbers assigned by the comptroller to the approved applicant executing the agreement and all Texas Taxpayer Identification Numbers of its reporting entity, which shall be the same numbers listed on the application and, if the approved applicant is comprised of members of a combined group, all Texas Taxpayer Identification Numbers for each such combined group's members that own a direct interest in the property subject to the proposed agreement;

(B) a stipulation that the agreement is executed on the basis that the application is complete and accurately represents all material representations, information, and facts and incorporates the application, and all the attachments thereto, and any application supplement or application amendment as part of the agreement as if set forth fully in the agreement;

(C) a condition that upon the written determination of the governing body of the school district that the application is either incomplete or inaccurate as to any material representation, information, or fact, the agreement shall be invalid and void except for the enforcement of the provisions required by subparagraph (L) [~~(K)~~] of this paragraph;

(D) provisions required for an agreement listed in Tax Code, Chapter 313 with particular reference to Tax Code, §313.027(e), (f), and (i);

(E) a provision that identifies the qualifying time period that shall be consistent with the qualifying time period requested in the application;

(F) a provision that identifies the beginning of the limitation period that is consistent with the limitation period requested in the application;

(G) [~~(F)~~] a condition that before the approved applicant may obtain the limitation on the appraised value identified in the agreement, the approved applicant shall make the qualified investment, as defined in Tax Code, §313.021(1), at least in the amounts required in Tax Code, §313.022, or §313.052 if applicable, within the qualifying time period specified in the agreement;

(H) [~~(G)~~] a provision that the approved applicant is required to:

(i) create at least the number of new [jobs ~~and~~] qualifying jobs required by Tax Code, Chapter 313 during the qualifying time period;

(ii) create at least the number of qualifying jobs to which the applicant committed in the application during the qualifying time period [~~no later than the last day of the tax year specified in the application~~];

~~[(iii) maintain at least the number of new jobs required by Tax Code, Chapter 313 from the time the jobs are created until at least the end of the third year following the expiration of the limitation on appraised value provided by the agreement; and]~~

~~[(iii) [(iv)] maintain at least the number of qualifying jobs committed in the application from the time the jobs are created until at least the end of the fifth [third] year following the expiration of the limitation on appraised value provided by the agreement; and~~

~~[(iv) for all jobs that are non-qualifying jobs, pay an average weekly wage that exceeds the average weekly wage for non-qualifying jobs in the county where the non-qualifying jobs are located;~~

(I) [~~(H)~~] a provision that identifies the limitation on the appraised value of the qualified property of the approved applicant consistent with Tax Code, §313.027, or if applicable Tax Code, §313.054;

(J) [~~(I)~~] a provision that separately states and explicitly identifies the amount, or the method for determining the amount, of any and all payments or transfers made to the school district or to any person or persons in any form if the payment or transfer of thing of value is provided in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value made pursuant to Tax Code, §§313.027(f)(1), 313.027(f)(2), or 313.027(i);

(K) [~~(J)~~] a provision by which the approved applicant is required to submit to the school district any information as thereafter may be reasonably requested by the school district or the comptroller in order to evaluate the progress of the agreement or administer and implement Tax Code, Chapter 313 and this subchapter;

(L) [~~(K)~~] a provision that:

(i) in the event that the approved applicant fails in any year to comply with the stipulation, condition, provision, or term of the agreement identified in subparagraphs (C), (D), (H)(i) [~~(G)(i)~~], or (J) [(I)] of this paragraph, the approved applicant is assessed as liquidated damages an amount equal to the amount computed by subtracting from the market value of the property for the tax year in which the approved applicant failed to comply, the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district;

(ii) deems the penalty delinquent if it is not paid on or before February 1 of the following tax year; and

(iii) applies Tax Code, §33.01 to the delinquent penalty in the manner that section applies to delinquent taxes;

(M) ~~[(L)]~~ a provision that the approved applicant shall comply with the conditions included in the certificate for a limitation issued by [final recommendation to approve the application from] the comptroller;

(N) ~~[(M)]~~ for agreements in which the governing body of the school district approved a deferral of the start of the qualifying time period, and in which the qualifying time period starts more than one year after the date that the application is approved, provisions that:

(i) require the approved applicant to provide an application amendment or supplement to the school district and comptroller:

(I) that identifies any changes in the information that was provided in the application that was approved by the school district and as considered by the comptroller;

(II) no earlier than 180 days prior to the start of the qualifying time period; and

(III) no later than 90 days prior to the start of the qualifying time period;

(ii) require the approved applicant to comply with a written request from the school district or the comptroller to provide additional information necessary to evaluate the economic impact analysis for the conditions prior to the start of the qualifying time period; and

(iii) authorize the governing body of the school district to terminate the agreement if the comptroller withdraws its certificate for a limitation based on the revised [after reviewing the amended] application [and the comptroller's recommendation or revised recommendation];

(O) ~~[(N)]~~ a provision that within 60 days from the date commercial operations begin [at the end of the qualifying time period], the approved applicant shall provide to the school district, the comptroller, and the appraisal district a specific and detailed description of the land, tangible personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) [on the qualified property] to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such qualified [described] property within the boundaries of the land [real property] which is subject to the agreement if the final description is different than the description provided in the application or any supplemental application information;

(P) ~~[(O)]~~ a provision that in order to amend or in any manner modify [apply the limitation to any property not specifically described in] the application, agreement, or notice as provided by subparagraph (O) [(N)] of this paragraph, the following shall occur:

(i) the approved applicant shall submit to the school district and the comptroller:

(I) a written request to amend the application and [add property to] the limitation agreement which shall specify the changes [include a specific description of the additional property to which] the applicant requests [that the limitation apply];

(II) any ~~[other]~~ changes to the information that was provided in the application that was approved by the school district and considered by the comptroller; and

(III) any additional information requested by the school district or the comptroller necessary to evaluate the amendment or modification [economic impact analysis for the additional property];

(ii) the comptroller shall review the request and any additional information and provide a revised comptroller certificate for a limitation [recommendation based on any changes to include any other property] within 90 days of receiving the revised application or the request to amend the application is denied [prior recommendation of the comptroller shall remain the recommendation of the comptroller];

(iii) in accordance with the procedure identified in §9.1054(h) ~~[(i)]~~ of this title, the governing body shall approve or disapprove the request before the expiration of 120 days after the request is filed; ~~[and]~~

(Q) a provision that the failure of the approved applicant to either pay a penalty assessed or provide and implement a plan to remedy a non-compliance as required by the comptroller pursuant to §9.1059 of this title (relating to Annual Compliance Review for Qualifying Jobs and Penalties) is a material breach of the agreement;

(R) a provision that the agreement holder may assign its interest in the agreement only if such assignment is approved according to the provisions of subparagraph (P) of this paragraph;

(S) for a Texas Priority Project, a provision that in the event that the approved applicant fails to place in service qualified investment of at least \$1 billion during the qualifying time period the agreement terminates and the applicant is subject to any damages or penalties required by the agreement, the comptroller's rules, or the Act; and

(T) ~~[(P)]~~ any other provision negotiated between the applicant and the school district that does not conflict or impair the application or implementation of any stipulation, provision, or term required by this paragraph, this subchapter or Tax Code, Chapter 313;

(3) if the applicant includes a combined group or members of the combined group, have the agreement executed by the authorized representative of each member of the combined group that owns a direct interest in property subject to the proposed agreement by which such members are jointly and severally liable for the performance of the stipulations, provisions, terms, and conditions of the agreement;

(4) comply with all stipulations, provisions, terms, and conditions of the agreement for a limitation on appraised value executed with the school district, this subchapter, and Tax Code, Chapter 313;

(5) be and remain in good standing under the laws of this state and maintain legal status as an entity, as defined in this subchapter;

(6) owe no delinquent taxes to the state;

(7) maintain eligibility for limitation on appraised value pursuant to Tax Code, Chapter 313; and

(8) provide to the school district, the comptroller, and the appraisal district any change to information provided in the application, including but not limited to:

(A) changes of the authorized representative(s);

(B) changes to the location and contact information for the approved applicant including all members of the combined group participating in the limitation agreement;

(C) copies of any valid assignments of the agreement and contact information for authorized representative(s) of any assignees.

~~{(g) Tax Credit. An approved applicant may receive a credit for that part of the maintenance and operations property taxes that were paid to a school district for each full tax year during the qualifying time period of an executed and performed tax limitation agreement in an amount that is equal to the difference between the amount of maintenance and operations tax that was actually paid on the qualified property and the amount of maintenance and operations tax that would have been paid based on the appraised value limitation to which the school district agreed. In order to request a tax credit, the approved applicant shall:}~~

~~{(1) fully and accurately complete the comptroller's current application form signed by the approved applicant or the individual duly authorized to act on behalf of the approved applicant by which the approved applicant confirms and attests to the truth and accuracy of the information submitted in the tax credit application to the best knowledge and belief of the approved applicant or its representative(s); and}~~

~~{(2) submit to the school district no earlier than the date the property taxes are paid for the last year of the qualifying time period:}~~

~~{(A) the completed comptroller's current application form;}~~

~~{(B) a tax receipt from the collector of taxes for the school district showing full payment of school district ad valorem taxes on the qualified property for the applicable qualifying time period; and}~~

~~{(C) on request of the school district or comptroller, any other document or information considered reasonably necessary for a determination of applicant's eligibility for the credit or the amount of the credit.}~~

*§9.1054. School District Application Review and Agreement to Limit Appraised Value.*

(a) Application fee. Prior to accepting an application for an agreement for limitation on appraised value pursuant to Tax Code, Chapter 313, Subchapter B, the governing body of a school district by official action shall establish a reasonable nonrefundable application fee to be paid by an applicant who applies to the school district for a limitation on the appraised value of applicant's property under such subchapter. The amount of the fee shall not exceed the estimated cost to the district of processing and acting on an application. The total fee shall be paid at time the application is submitted to the school district. Any fees not accompanying the original application shall be considered supplemental payments.

(b) Initial review. If a school district receives a completed application, amended application, or supplemental application for property tax limitation within its boundaries, the school district shall submit to the comptroller, not later than 7 days after receiving it, a copy of the following documents:

- (1) the application;
- (2) an economic analysis, if any;
- (3) application amendment;
- (4) application supplement; and
- (5) proof of payment of the total filing fee required by the school district.

(c) Acting on a completed application. If the governing body of the school district by official action elects to consider an application and determines that the application received is a completed application, the school district shall:

(1) provide written notice to the applicant and to the comptroller, with a copy to the appraisal district, that the school district has received and will be considering a completed application. The notice shall include:

- (A) the date on which the application was received;
- (B) the date on which the governing body elected to consider the application; and

(C) the date on which the school district determined that applicant has submitted a completed application;

(2) at the time the school district provides notice of a completed application, deliver to the comptroller:

(A) a copy of the completed application including all material required by §9.1053(a) and, if applicable (b), of this title (relating to Entity Requesting Agreement to Limit Appraised Value [and Tax Credit]); and

(B) a request to the comptroller to provide an economic impact evaluation;

~~{(3) twenty days after the school district provides notice of a completed application, submit, in a format approved by the comptroller, for each year starting with the first year of the qualifying period through the second year after the tax credit settle-up period:}~~

~~{(A) estimates of the impact of the project on public school state aid;}~~

~~{(B) estimates of the tax benefit to applicant through the tax credit and the limitation on the appraised value;}~~

~~{(C) estimates of required revenue protection funds the district may be entitled to in the agreement;}~~

~~{(D) estimates of extraordinary educational expenses the district may be entitled to in the agreement;}~~

~~{(E) estimates of the supplemental payment cap described in Tax Code, §313.027(i);}~~

~~{(F) general analysis of the range of possible effects of the project on the school district and on neighboring school districts' facilities needs;}~~

~~{(G) estimates of increased state aid associated with increased enrollment; and}~~

~~{(H) any other information the district is able to provide that the comptroller deems necessary to analyze the impact of the project on state and local public school revenues or expenditures;}~~

(3) ~~{(4)}~~ if the school district maintains a generally accessible Internet web site, provide a clear and conspicuous link on its web site to the Internet web site maintained by the comptroller where substantive documents for the value limitation application for such school district are posted;

(4) ~~{(5)}~~ on request of the comptroller, provide such written documents containing information requested by the comptroller as necessary for the consideration of a limitation on appraised value pursuant to Tax Code, Chapter 313 within 20 days of the date of the request; and

(5) ~~{(6)}~~ not later than 151 days after the application review start date, present to the governing body of the school district for its consideration:

(A) the completed application that has been submitted by applicant;

(B) the economic impact analysis submitted by the comptroller;

(C) ~~the comptroller certificate for a limitation or written explanation for not issuing a certificate [final written recommendation of the comptroller];~~ and

(D) a limitation agreement that includes all stipulations, provisions, terms, and conditions required by subsection (g) [(h)] of this section that is acceptable to the applicant.

(d) Extending time period for action. The governing body of the school district may extend the time period to approve a completed application required by subsection (c)(5) [(e)(6)] of this section only if:

(1) either:

(A) an economic impact analysis has not been submitted to the school district by the comptroller; or

(B) by agreement with applicant; and

(2) notice of the extension is provided to the comptroller within 7 days of the decision to provide the extension.

(e) Application changes after the notice of completed application. If a school district receives an amended application or a supplemental application from an applicant after the school district has prepared or sent written notice that the applicant has submitted a completed application, the school district shall either:

(1) reject the amended application, supplemental application, or application, in whole or in part, and discontinue consideration of any submission by applicant;

(2) with the written concurrence of the comptroller, consider the completed application, as amended or supplemented, before the 151st day from the application review start date; or

(3) review the documents submitted by applicant, issue an amended written notice of a completed application, and present the amended application to the governing body of the school district in the manner and time period authorized by subsection (c)(5) [(e)(6)] of this section.

(f) Application with ~~[positive ]~~ comptroller certificate for a limitation [recommendation]. When presented a completed application pursuant to subsection (c)(5) [(e)(6)] of this section for which the comptroller has submitted a comptroller certificate for a limitation [final written recommendation to approve], the governing body of the school district shall either:

(1) by majority vote adopt a written resolution approving the application which shall include:

(A) written findings:

(i) as to each criterion listed in §9.1055(d)(3)(B) - (D) of this title (relating to Comptroller Application Review and Agreement to Limit Appraised Value) [Tax Code, §313.026];

(ii) as to the criteria required by Tax Code, §313.025(f-1) if applicable;

(iii) that the information in the application is true and correct; and

(iv) that applicant is eligible for the limitation on the appraised value of the entity's qualified property;

(B) a determination that granting the application is in the best interest of the school district and this state; and

(C) designate and direct a representative of the governing body of the school district to execute the agreement for property tax limitation presented by the approved applicant that complies with this subchapter and Tax Code, Chapter 313;

(2) by majority vote disapprove the application; or

(3) take no official action and the application shall be considered disapproved on the 151st [152nd] day after the application review start date.

~~[(g) Application with negative comptroller recommendation. When presented a completed application pursuant to subsection (e)(6) of this section for which the comptroller has submitted a final written recommendation to disapprove, the governing body of the school district shall either:]~~

~~[(1) hold a public hearing the sole purpose of which is to consider the application and the comptroller's recommendation and at a subsequent meeting held after the date of the public hearing vote by at least two-thirds of the members of the governing body to approve the application by written resolution that shall include:]~~

~~[(A) written findings:]~~

~~[(i) as to each criterion listed in Tax Code, §313.026;]~~

~~[(ii) as to the criteria required by Tax Code, §313.025(f-1) if applicable;]~~

~~[(iii) that the information in the application is true and correct; and]~~

~~[(iv) that applicant is eligible for the limitation on the appraised value of the entity's qualified property;]~~

~~[(B) a determination that granting the application is in the best interest of the school district and this state;]~~

~~[(C) authorizes a representative of the governing body of the school district to execute an agreement for limitation on appraised value that incorporates the terms of the completed application as approved by the governing body and complies with Tax Code, Chapter 313 and this subchapter;]~~

~~[(2) disapprove the application by majority vote; or]~~

~~[(3) take no official action and the application shall be considered disapproved on the 152nd day after the application review start date.]~~

(g) [(h)] Agreement for limitation on appraised value. Pursuant to the provisions of Tax Code, Chapter 313 and this subchapter, in order to implement a limitation on the appraised value for school district maintenance and operation tax purposes on the approved applicant's qualified property that has been approved by the governing body of the school district, at the time of the approval of the application, the authorized representative of the school district and the approved applicant shall execute a Texas Economic Development Act Agreement with terms [an agreement] that at a minimum includes:

(1) all Texas Taxpayer Identification Numbers assigned by the comptroller to the approved applicant executing the agreement and all Texas Taxpayer Identification Numbers of its reporting entity, which shall be the same numbers listed on the application and, if the approved applicant is comprised of members of a combined group, all Texas Taxpayer Identification Numbers for each such combined group's members that own a direct interest in the property subject to the proposed agreement;



(2) a stipulation that the agreement is executed on the basis that the application is complete and accurately represents all material representations, information, and facts and incorporates the application, ~~[ and] all the attachments thereto, and any application supplement or application amendment~~ as part of the agreement as if set forth fully in the agreement;

(3) a condition that upon the written determination of the governing body of the school district that the application is either incomplete or inaccurate as to any material representation, information, or fact, the agreement shall be invalid and void except for the enforcement of the provisions required by paragraph ~~(12) [(11)]~~ of this subsection;

(4) provisions required for an agreement listed in Tax Code, Chapter 313 with particular reference to Tax Code, §313.027(e), (f), and (i);

(5) a provision that identifies the qualifying time period that shall be consistent with the qualifying time period requested in the application;

(6) a provision that identifies the beginning of the limitation period that is consistent with the limitation period requested in the application;

~~(7) [(6)]~~ a condition that before the appraised value of the qualified property of the approved applicant may obtain the limitation on the appraised value identified in the agreement, the approved applicant shall make the qualified investment, as defined in Tax Code, §313.021(1), at least in the amounts required in Tax Code, §313.022, or §313.052 if applicable, within the qualifying time period specified in the agreement;

~~(8) [(7)]~~ a provision that the approved applicant is required to:

(A) create at least the number of new ~~[jobs and]~~ qualifying jobs required by Tax Code, Chapter 313 during the qualifying time period;

(B) create at least the number of qualifying jobs to which the applicant committed in the application during the qualifying time period ~~[no later than the last day of the tax year specified in the application];~~

~~[(C) maintain at least the number of new jobs required by Tax Code, Chapter 313 from the time they are created until at least the end of the third year following the expiration of the limitation on appraised value provided by the agreement; and]~~

~~(C) [(D)]~~ maintain at least the number of qualifying jobs committed in the application from the time they are created until at least the end of the fifth ~~[third]~~ year following the expiration of the limitation on appraised value provided by the agreement; and

(D) for all jobs that are non-qualifying jobs, pay an average weekly wage that exceeds the average weekly wage for non-qualifying jobs in the county where the non-qualifying jobs are located;

~~(9) [(8)]~~ a provision that identifies the limitation on the appraised value of the qualified property of the approved applicant consistent with Tax Code, §313.027, or if applicable Tax Code, §313.054;

~~(10) [(9)]~~ a provision that separately states and explicitly identifies the amount, or the method for determining the amount, of any and all payments or transfers made to the school district or to any person or persons in any form if the payment or transfer of thing of value is provided in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value made pursuant to Tax Code, §§313.027(f)(1), 313.027(f)(2), or 313.027(i);

~~(11) [(10)]~~ a provision by which the approved applicant is required to submit to the school district any information as thereafter may be reasonably requested by the school district or the comptroller in order to evaluate the progress of the agreement or administer and implement Tax Code, Chapter 313 and this subchapter;

~~(12) [(11)]~~ a provision that:

(A) in the event that the approved applicant fails in any year to comply with the stipulation, provision, term, or condition of the agreement identified in paragraphs (3), (4), ~~(8)(A) [(7)(A)]~~, or ~~(10) [(9)]~~ of this subsection, the approved applicant is assessed as liquidated damages an amount equal to the amount computed by subtracting from the market value of the property for the tax year in which the approved applicant failed to comply, the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district;

(B) deems the penalty delinquent if it is not paid on or before February 1 of the following tax year; and

(C) applies Tax Code, §33.01 to the delinquent penalty in the manner that section applies to delinquent taxes;

~~(13) [(12)]~~ a provision that the approved applicant shall comply with the conditions included in the certification for a limitation issued by ~~[final recommendation to approve the application from] the comptroller;~~

~~(14) [(13)]~~ for agreements in which the governing body of the school district approved a deferral of the start of the qualifying time period, and in which the qualifying time period starts more than one year after the date that the application is approved, provisions that:

(A) require the approved applicant to provide an application amendment or supplement to the school district and comptroller:

(i) that identifies any changes in the information that was provided in the application that was approved by the school district and as considered by the comptroller;

(ii) no earlier than 180 days prior to the start of the qualifying time period; and

(iii) no later than 90 days prior to the start of the qualifying time period;

(B) require the approved applicant to comply with a written request from the school district or comptroller to provide additional information necessary to evaluate the economic impact analysis for the conditions prior to the start of the qualifying time period; and

(C) authorize the governing body of the school district to terminate the agreement if the comptroller withdraws its certificate for a limitation based on the revised application ~~[after reviewing the amended application and the comptroller's recommendation or revised recommendation];~~

~~(15) [(14)]~~ a provision that within 60 days from the date commercial operations begin ~~[at the end of the qualifying time period]~~, the approved applicant shall provide to the school district, the comptroller, and the appraisal district a specific and detailed description of the land, tangible personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) ~~[on the qualified property]~~ to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such qualified ~~[described]~~ property within the boundaries of the land ~~[real property]~~ which is subject to the agreement if the final description is different than the description provided in the application or any supplemental application information;

(16) [(45)] a provision that in order to amend or in any manner modify [apply the limitation to any property not specifically described in] the application, agreement, or notice as provided by paragraph (14) [(43)] of this subsection, the following shall occur:

(A) the approved applicant shall submit to the school district and the comptroller:

(i) a written request to amend the application and [add property to the] limitation agreement which shall specify the changes [include a specific description of the additional property to which] the applicant requests [that the limitation apply];

(ii) any ~~other~~ changes to the information that was provided in the application that was approved by the school district and considered by the comptroller; and

(iii) any additional information requested by the school district or the comptroller necessary to evaluate the amendment or modification [economic impact analysis for the conditions];

(B) the comptroller shall review the request and any additional information and provide a revised comptroller certificate for a limitation [recommendation based on any changes to include any other property] within 90 days of receiving the revised application or the request to amend the application is denied [prior recommendation of the comptroller shall remain the recommendation of the comptroller];

(C) in accord with the procedure identified in subsection (h) [(†)] of this section, the governing body of the school district shall approve or disapprove the request before the expiration of 120 days after the request is filed; ~~[and]~~

(17) a provision that the failure of the approved applicant to either pay a penalty assessed or provide and implement a plan to remedy a non-compliance as required by the comptroller pursuant to §9.1059 of this title (relating to Annual Compliance Review for Qualifying Jobs and Penalties) is a material breach of the agreement;

(18) a provision that the agreement holder may assign its interest in the agreement only if such assignment is approved according to the provisions of paragraph (16) of this subsection;

(19) for a Texas Priority Project, a provision that in the event that the approved applicant fails to place in service qualified investment of at least \$1 billion during the qualifying time period the agreement terminates and the applicant is subject to any damages or penalties required by the agreement, the comptroller's rules, or the Act; and

(20) [(46)] any other provision negotiated between the applicant and the school district that does not conflict or impair the application or implementation of any stipulation, provision, term, or condition required by this subsection, this subchapter, or Tax Code, Chapter 313.

(h) [(†)] Limitation agreement with deferred qualifying time period. If an agreement for limitation on appraised value includes a provision in which the qualifying time period starts more than one year after the date that the application is approved, the agreement [school district] shall include a provision that:

(1) requires [require] the approved applicant to:

(A) provide an application amendment and supplement to the school district and comptroller:

(i) that identifies any changes in the information that was provided in the application that was approved by the school district and that was considered by the comptroller;

(ii) no earlier than 180 days prior to the start of the qualifying time period; and

(iii) no later than 90 days prior to the start of the qualifying time period; and

(B) comply with a written request from the comptroller to provide additional information necessary to prepare a comptroller certificate for a limitation [evaluate the economic impact analysis] for the conditions prior to the start of the qualifying time period; and

(2) if the comptroller provides [a revised recommendation to disapprove the request for limitation on appraised value, the governing body of the school district shall either]:

(A) a comptroller certificate for a limitation with conditions different from the existing agreement, the governing body shall hold a meeting and determine whether to amend the agreement to include the conditions required by the comptroller or terminate the agreement; or [hold a public hearing the sole purpose of which is to reconsider the application and the comptroller's revised recommendation and at a subsequent meeting held after the date of the public hearing vote by at least two-thirds of the members of the governing body to approve the application by written resolution that shall include the findings and determination set forth in subsection (g)(1)(A) and (B) of this section];

(B) a written explanation of the comptroller's decision not to re-issue a certificate, the school district shall terminate the agreement. [disapprove the application by majority vote; or]

~~[(C) take no official action and the agreement shall be considered terminated on the 60th day after the date of the revised recommendation of the comptroller.]~~

(i) [(†)] Compliance and enforcement.

(1) The school district shall provide to the comptroller:

(A) any documents that reasonably appear to be substantive documents as defined in this subchapter; and

(B) within seven days of executing the agreement, a copy of the executed agreement and any attachments thereto.

(2) The school district shall provide a copy of the executed agreement to the appraisal district.

(3) The school district shall comply with and enforce the stipulations, provisions, terms, and conditions of the agreement for limitation of the appraised value, this subchapter, and Tax Code, Chapter 313 ~~[with particular reference to §313.0275].~~

(4) To determine and obtain compliance with each agreement, for each calendar year during the term of the agreement the school district shall [may] require the approved applicant to submit:

(A) either:

(i) the information necessary to complete the Annual Eligibility Report, adopted by reference in §9.1052 of this title (relating to Forms); or

(ii) ~~[(B)] a completed Annual Eligibility Report, adopted by reference in §9.1052 of this title;[-]~~

(B) a completed Job Creation Compliance Report (Form 50-825), adopted by reference in §9.1052 of this title; and

(C) any information required by the State Auditor Office or its designee.

~~[(k) Tax credit. The governing body of a school district may provide a credit for that part of the maintenance and operations property taxes that were paid to a school district for each whole tax year during~~

the qualifying time period of an executed and performed tax limitation agreement in an amount that is equal to the difference between the amount of maintenance and operations tax that was actually paid on the qualified property and the amount of maintenance and operations tax that would have been paid based on the appraised value limitation to which the school district agreed.}]

[(1) In order to provide a tax credit, the school district shall:}]

[(A) submit to the comptroller copies of all the documents submitted by the approved applicant to the school district;}]

[(B) review the application submitted by the approved applicant;}]

[(C) prior to granting the tax credit, determine the approved applicant's eligibility for a tax credit by finding that the approved applicant:}]

[(i) has submitted an application that complies with §9.1053(f) of this title;}]

[(ii) has submitted a tax receipt from the collector of taxes for the school district showing full payment of school district ad valorem taxes on the qualified property for the applicable qualifying time period;}]

[(iii) has submitted any other document or information that the comptroller or the governing body considers necessary for a determination of applicant's eligibility for the credit or the amount of the credit; and}]

[(iv) is currently in full compliance with the agreement; and}]

[(D) if the governing body of the school district by majority vote determines that the approved applicant has met the requirements of Tax Code, Chapter 313, Subchapter D and this subsection, adopt an order or resolution directing the collector of taxes for the school district:}]

[(i) in the second and subsequent six tax years that begin after the date the tax credit application is approved, to credit against the taxes imposed on the qualified property by the district in that year an amount equal to one-seventh of the total amount of tax credit to which the entity is entitled under Tax Code, §313.102, except that the amount of a credit granted in any of those tax years may not exceed 50% of the total amount of the interest and sinking and maintenance and operations ad valorem school taxes imposed on the qualified property by the school district in that tax year; and}]

[(ii) in the first three tax years that begin on or after the date the entity's eligibility for the limitation under Tax Code, Chapter 313, Subchapter B or C expires, to credit against the taxes imposed on the qualified property by the district an amount equal to the portion of the total amount of tax credit to which the entity is entitled under Tax Code, §313.102 that was not credited against the entity's taxes under subparagraph (A) of this paragraph in a tax year covered by subparagraph (A) of this paragraph, except that the amount of a tax credit granted under this paragraph in any tax year may not exceed the total amount ad valorem school taxes imposed on the qualified property by the school district in that tax year.}]

[(2) If the school district receives written notice from the comptroller or the Texas Education Agency that an approved applicant may not have been entitled to a tax credit or may have been entitled to a lesser amount than an approved applicant received, the school district shall investigate that determination, submit a report to the governing body of the school district on the determination, and provide a writ-

ten response to the comptroller that the governing body of the school district concludes either that the approved applicant did or did not receive unauthorized tax credits. If the governing body of the school district and the comptroller concur that an approved applicant may not have been entitled to a tax credit or may have been entitled only to a lesser amount than the approved applicant actually received, each shall provide their written notice regarding the finding to the approved applicant, the County Appraisal District, the appropriate tax assessor collector, and the Texas Education Agency.}]

§9.1055. *Comptroller Application Review and Agreement to Limit Appraised Value.*

(a) Documents submitted to comptroller. Within 15 days of receiving or creating a substantive document, the comptroller shall post such document on the comptroller's Internet website, provided however, the comptroller shall not post any documents determined to be confidential in accordance with Tax Code, §313.028 and this section.

(1) The comptroller shall deem information as confidential only if the document:

(A) at the time that it is received by the comptroller, the party requesting confidentiality:

(i) has segregated the information for which confidentiality is being requested from the other information submitted to the comptroller and clearly and conspicuously labeled it confidential information;

(ii) provides a written list specifically identifying each document, portion of document, or entry in the form prescribed by the comptroller that applicant contends is confidential; and

(iii) provides in writing specific reasons, including any relevant legal authority, stating why the material is believed to be confidential; and

(B) the comptroller determines that the information for which confidentiality is sought describes:

(i) specific processes or business activities to be conducted by the applicant; or

(ii) specific tangible personal property to be located on real property covered by the application.

(2) Substantive documents deemed confidential will not be posted on the internet and will otherwise be withheld from public release unless and until the governing body of the school district acts on the application or the comptroller is directed to release the documents by a ruling from the Attorney General.

(3) All applications and parts of applications which are not segregated and marked as confidential as required under this section shall be considered substantive documents and shall be posted on the internet.

(4) When the governing body of the school district agrees to consider the application, information in the custody of a school district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility pursuant to Tax Code, Chapter 313, such as the nature and amount of the projected investment, employment, wages, and benefits, shall not be considered confidential business information.

(b) Application review. Upon receiving an application and accompanying documentation, the comptroller shall review the application to determine if it is complete.

(1) If the comptroller determines that the application was not submitted in compliance with or does not have documents or infor-

mation required pursuant to §9.1053(a) and if applicable (b), of this title (relating to Entity Requesting Agreement to Limit Appraised Value [and Tax Credit]), or does not provide all necessary information the comptroller determines is necessary to make the determinations [for the economic impact evaluation] required by Tax Code, §313.026, and subsection (d) of this section, the comptroller shall provide written notice to the school district, with a copy to applicant, identifying the information that is required or necessary to complete the application.

(A) Supplemental application information, amended application information, and additional information requested by the comptroller shall be promptly forwarded to the comptroller within 20 days of the date of the request.

(B) On request of the school district or applicant, the comptroller may extend the deadline for providing additional information for a period of not more than 10 working days.

(C) Additional information concerning investment, property value, property description, employment, and the qualifying time period that is not provided to the comptroller in a timely manner may or may not be used by the comptroller in making the determinations required by Tax Code, §313.026 or this section [included in the comptroller's recommendation, economic impact evaluation, or report].

(2) Until the comptroller receives such information as is required and necessary to be submitted by applicant, the comptroller may discontinue further action on the application. The comptroller shall discontinue consideration of an application that remains incomplete for more than 180 days after the date the comptroller first received the application plus the number of days of any extension, notice of which has been provided to the comptroller pursuant to §9.1054(d) of this title (relating to School District Application Review and Agreement to Limit Appraised Value).

(3) When the comptroller determines that the documentation submitted in support of an application meets the requirements for an application pursuant to §9.1053(a) and if applicable (b), of this title, and the comptroller has received from the school district a request to provide an economic impact evaluation and all necessary documents for an appropriate evaluation of the requested appraised value limitation from the applicant and the school district, the comptroller shall provide:

(A) written notice to the school district and applicant that applicant has submitted a completed application; and [-]

(B) a copy of the completed application to the Texas Education Agency.

(c) Action on completed application. After issuing a notice of a completed application, and after receipt of the information from the school district required by §9.1054(c)(2) of this title, the comptroller shall determine whether the property meets the requirements of Tax Code, §313.024 for eligibility for a limitation on appraised value pursuant to the provisions of Tax Code, Chapter 313, Subchapter B or C, whichever is applicable.

(1) If the comptroller determines that the property is not eligible for a limitation on appraised value, the [The] comptroller shall:

(A) notify the governing body of the school district and applicant of the comptroller's determination by certified mail return receipt requested; and [-]

(B) discontinue consideration of the application.

(2) If an applicant disagrees with a denial of eligibility for limitation of appraised value under Tax Code, §313.024, applicant may

appeal the eligibility determination pursuant to the procedures set forth in Tax Code, Chapter 313 and in §9.1056 of this title (relating to Eligibility Determination Appeal).

(2) The comptroller shall discontinue consideration of an application that the comptroller has determined is not eligible. If an appeal under §9.1056 of this title, results in a determination that the project is eligible, the comptroller shall re-commence review of the application.

(d) Action on an eligible completed application. After determining that property identified in an application is eligible for limitation for appraised value and upon receiving a request from the school district to prepare an economic impact analysis, the comptroller shall:

(1) review any information available to the comptroller including:

(A) the application;

(B) public documents or statements by the applicant concerning business operations or site location issues or in which the applicant is a subject;

(C) statements by officials of the applicant, public documents or statements by governmental or industry officials concerning business operations or site location issues;

(D) existing investment and operations at or near the site or in the state that may impact the proposed project;

(E) announced real estate transactions, utility records, permit requests, industry publications or other sources that may provide information helpful in making the determination; and

(F) market information, raw materials or other production inputs, availability, existing facility locations, committed incentives, infrastructure issues, utility issues, location of buyers, nature of market, supply chains, other known sites under consideration, or any other information;

(2) prepare an economic impact analysis on the investment proposed by the application as required by Tax Code, §313.025 which may include:

(A) estimates of the maintenance and operations taxes for the 25 year period after the beginning of the limitation period;

(B) estimated tax revenue to the state generated by expenditures by the project, including wages, construction and operational expenditures, or other expenditures; and

(C) tax impacts, positive or negative, to the state based on indirect effects of the project, as estimated by the agency and using publicly available economic modeling systems;

(3) make the following determinations whether:

(A) it is reasonable to conclude from all the information available that the application is true and correct;

(B) the applicant is eligible for the limitation on the appraised value of the applicant's qualified property;

(C) the project proposed by the applicant is reasonably likely to generate tax revenue in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement before the 25th anniversary of the beginning of the limitation period; and

(D) the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in this state;

(4) ~~not~~ [Not] later than 90 days after written notice that the school district and the comptroller have determined that applicant has submitted a completed application that is eligible for a limitation of appraised value under Tax Code, §313.025(b), [~~§313.024, the comptroller shall~~] provide to the school district:

~~(A) an economic impact evaluation as required pursuant to Tax Code, §313.025(b);~~

~~(B) the comptroller's conclusion for each made pursuant to paragraph (3) of this subsection; and~~

~~(C) one of the three following:~~

~~(i) a comptroller certificate for a limitation;~~

~~(ii) a comptroller certificate for a limitation, subject~~

~~to:~~

~~(I) conditions identified in the comptroller certificate for a limitation being completed prior to execution of the agreement; or~~

~~(II) the agreement including additional provisions as identified in the comptroller certificate for a limitation; or~~

~~(iii) a written explanation of the comptroller's decision not to issue a certificate.~~

~~{(1) an economic impact evaluation as required pursuant to Tax Code, §313.026;}~~

~~{(2) a recommendation that the school district:}~~

~~{(A) approve the request for limitation on appraised value presented in the completed application;}~~

~~{(B) approve the request for limitation on appraised value presented in the completed application, subject to:}~~

~~{(i) conditions identified in the recommendation being completed prior to execution of the agreement; or }~~

~~{(ii) the agreement including additional provisions as identified in the recommendation; or }~~

~~{(C) disapprove the request for limitation on appraised value presented in the completed application.}~~

(e) Action after agreement review. No later than 20 business [seven] days after receiving an agreement for limitation on appraised value acceptable to an applicant, the comptroller [shall]:

(1) shall review the agreement for:

(A) compliance with Tax Code, Chapter 313, and this subchapter; and

(B) consistency with the application submitted to the comptroller and as amended or supplemented;

(2) [~~provide to the school district:~~]

~~{(A) written confirmation that the comptroller has received and reviewed the agreement submitted by the applicant and affirms the recommendation previously made; or }~~

~~{(B) if the comptroller determines that the agreement as submitted by the applicant does not comply with Tax Code, Chapter 313 or this subchapter or that the agreement contains provisions that are not consistent with or represents information significantly different from that presented in the application as submitted to the comptroller, may amend or withdraw the comptroller certificate for a limitation; and [an amended written recommendation that the school district:]}~~

~~{(i) approve the request for limitation on appraised value presented in the completed application and agreement; or}~~

~~{(ii) disapprove the request for limitation on appraised value presented in the completed application as reflected in the agreement.}~~

(3) provide written notification to the school district of the actions taken under this subsection.

(f) Application changes after the notice of completed application. If the comptroller receives an amended application or a supplemental application by an applicant after the comptroller has prepared or sent written notice that applicant has submitted a completed application, the comptroller shall:

(1) reject the amended application, supplemental application, or application, in whole or in part, and discontinue consideration of any submission by applicant;

(2) with the written concurrence of the school district, consider the completed application, as amended or supplemented, before the 91st day from application review start date; or

(3) review the documents submitted by applicant and complete the requirements according to; ~~issue an amended written notice of a completed application; and prepare the economic impact analysis and recommendation in the manner and time period authorized by~~ subsection (d) of this section.

(g) Applications and agreements for deferred qualifying time period. When an eligible completed application for an agreement for limitation on appraised value requests to begin the qualifying time period after the date that the application is approved, the comptroller:

(1) to the extent possible, shall prepare the economic impact analysis for an estimated impact of the qualified investment during the proposed qualifying time period;

(2) if an appraised value limitation agreement which defers the time at which the qualifying time period starts for more than one year is executed, may request at any time prior to the commencement of the qualifying time period additional information to revise the economic impact analysis for the qualified investment; and

(3) based on the revised economic impact analysis, may revise the comptroller certificate for a limitation [~~recommendation~~] that was previously submitted, or determine to not issue such a certificate; and

(4) if a revised comptroller certificate for a limitation [~~recommendation~~] is prepared, or a determination is made not to issue such a certificate, shall provide the revised comptroller certificate for a limitation, or a written explanation of the decision not to issue such certificate, [~~recommendation~~] and revised economic impact analysis to the school district and approved applicant.

#### §9.1057. Reports by Comptroller.

(a) In order to fulfill the comptroller's statutory obligation under Tax Code, Chapter 313, the comptroller may request information from:

(1) approved applicants;

(2) school districts;

(3) appraisal districts; or

(4) any other relevant source.

(b) The entities receiving a request from the comptroller under this section shall provide the information requested in the form and in the manner designated by the comptroller.

[(c) If the comptroller receives written notice from the governing body of the school district or the Texas Education Agency that an approved applicant was not entitled to a tax credit or was entitled to a lesser amount than an approved applicant received, the comptroller shall investigate that determination and provide a written response to the school district that concludes either that the approved applicant may have or may not have received unauthorized tax credits. If the governing body of the school district and the comptroller agree that an approved applicant may not have been entitled to a tax credit or may have been entitled only to a lesser amount than the approved applicant actually received, they shall promptly notify the approved applicant, the appraisal district, the appropriate tax assessor collector, and the Texas Education Agency.]

§9.1058. Miscellaneous Provisions.

(a) A recipient of limited value under Tax Code, Chapter 313 shall notify immediately the comptroller, school district, and appraisal district in writing of any change in address or other contract information for the owner of the property subject to the limitation agreement for the purposes of Tax Code, §313.032. An assignee's or its reporting entity's Texas Taxpayer Identification Number shall be included in the notification.

(b) Changes in property values, population data, or strategic investment area designations that occur after an agreement is executed do not affect the job requirements or value limitation in the agreement.

(c) The comptroller may promulgate guidelines for the administration of Tax Code, Chapter 313.

(d) The comptroller shall provide information for determining the category in which a school district is classified pursuant to either Tax Code, §313.022 or §313.052 using the following procedure:

(1) No later than October 1 of each year, the comptroller shall publish on its web site a list and map of the areas that qualify as a strategic investment area using the most recently completed full calendar year data available as of September 1 of that year.

(2) The school district and the comptroller shall apply the information from this list and property tax values published by the comptroller's Property Tax Assistance Division to determine school district categories applicable to applications for agreements for value limitation for the succeeding calendar year starting on January 1 of such year.

(e) Unless expressly stated otherwise, applications and the agreements executed for such application are governed by the statutes and applicable rules and guidelines in effect at the time the application is determined to be complete.

§9.1059. Annual Compliance Review for Qualifying Jobs and Penalties.

(a) The comptroller shall conduct an annual review of new qualifying jobs for each agreement holder to determine whether the agreement holder has created the number of new qualifying jobs required in the agreement and Tax Code, Chapter 313.

(b) To make the determination, the comptroller may:

(1) review any Job Creation Compliance Report (Form 50-825) submitted by the agreement holder;

(2) request additional information from the agreement holder and inspect the facilities of the agreement holder at which the jobs were to be created, subject to 3 day advance notice to the agreement holder and a mutually agreeable time during regular business hours; or

(3) consider any other information that is available to the comptroller.

(c) The comptroller may issue a determination that a job created by the agreement holder is not a new qualifying job if the job is identified as a qualifying job by the agreement holder:

(1) does not provide 1,440 hours of work or more for that year;

(2) was transferred from a facility of the agreement holder from one area of the state to the property covered by the agreement;

(3) was created to replace a previous employee of the agreement holder;

(4) is not covered by a group health benefit plan for which the business offers to pay at least 72% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage; or

(5) does not pay an amount equal to at least 99% of the average weekly wage for manufacturing jobs in the county where the school district administrative office is located and calculated pursuant to the method prescribed by Tax Code, §313.021(5) that is elected by the agreement holder in the application.

(d) If the comptroller makes a determination that the agreement holder did not create the required number of qualifying jobs pursuant to subsection (c) of this section, the comptroller shall provide notice to the agreement holder which shall include:

(1) the cause of the adverse determination; and

(2) corrective measures necessary to remedy the non-compliance.

(e) If the comptroller finds that an agreement holder who received an adverse determination in the previous year has failed to remedy the non-compliance following notification of the determination and the comptroller makes an adverse determination with respect to the agreement holder's compliance in the succeeding year:

(1) the comptroller shall provide notice to the agreement holder as required by subsection (d) of this section; and

(2) the agreement holder shall submit to the comptroller a plan to remedy the non-compliance and certify the agreement holder's intent to fully implement the plan not later than December 31 of the year in which the determination is made.

(f) If the comptroller finds that an agreement holder who received an adverse determination in the previous year under subsections (d) and (e) of this section, and has failed to remedy the non-compliance following notification of the determination and the comptroller makes an adverse determination with respect to the agreement holder's compliance in the succeeding year, the comptroller shall impose a penalty on the agreement holder in an amount equal to the amount computed by:

(1) subtracting from the number of qualifying jobs required to be created the number of qualifying jobs actually created; and

(2) multiplying the amount computed under paragraph (1) of this subsection, by the average annual wage for all jobs in the county during the most recent four quarters for which data is available.

(g) Notwithstanding subsection (f) of this section, if the comptroller finds that an agreement holder has received an adverse determination and the comptroller has previously imposed a penalty on the agreement holder under this section one or more times, the comptroller shall impose a penalty on the agreement holder in an amount equal

to the amount computed by multiplying the amount computed under subsection (f) of this section, by an amount equal to twice the average annual wage for all jobs in the county during the most recent four quarters for which data is available.

(h) In no event shall a penalty assessed under this section exceed an amount equal to the difference between the amount of the ad valorem tax benefit received by the agreement holder under the agreement in the preceding year and the amount of any supplemental payments made to the school district in that year.

(i) If the comptroller imposes a penalty on an agreement holder under this section three times, the comptroller may rescind the agreement between the agreement holder and the school district under this chapter.

(j) An adverse determination made under this subsection is subject to the provisions applicable to a deficiency determination under, and subject to the provisions to, Tax Code, §§111.008, 111.0081, and 111.009. A penalty imposed under this subsection is an amount the comptroller is required to collect, receive, administer, or enforce, and the determination is subject to the payment and redetermination requirements of Tax Code, §111.0081 and §111.009. A redetermination under Tax Code, §111.009 of an adverse determination under this section is a contested case as defined by Government Code, §2001.003.

(k) The comptroller shall deposit a penalty collected under this section, including any interest and penalty applicable to the penalty, to the credit of the foundation school fund.

(l) The penalties and procedures set out in this section do not affect the enforcement of any provisions in an agreement for value limitation between the school district and an agreement holder.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400826

Ashley Harden

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 6, 2014

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



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 1. ORGANIZATION AND ADMINISTRATION

##### SUBCHAPTER C. PERSONNEL AND EMPLOYMENT POLICIES

###### 37 TAC §1.38

The Texas Department of Public Safety (the department) proposes amendments to §1.38, concerning Personnel Complaint Policy. Pursuant to Texas Government Code, §2001.039, the de-

partment reviewed this chapter and determined an update to this rule was necessary to reflect current office titles and addresses. Additional non-substantive changes were made to correct formatting errors in this section.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this 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 this 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 also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be current and updated rules.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Rhonda Fleming, I.G., Office of Inspector General, Texas Department of Public Safety, 13706 Research Boulevard, Suite 100, Austin, Texas 78750. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.006(4) and §2001.039 are affected by this proposal.

###### §1.38. Personnel Complaint Policy.

(a) Purpose. The purpose of this section [these rules] is to set out how and where to file a complaint about the actions or behavior of an employee of the Texas Department of Public Safety in compliance with Texas Government Code, §411.0195.

(b) Applicability. The policies and procedures described in this section [subchapter] apply only to complaints made against an employee of the department either by another employee of the department or by a member of the public.

(c) Definitions. The following words and terms, when used in this section [subchapter], shall have the following meanings unless the context in which the word or term is used clearly indicates otherwise:

(1) Complaint--A [a] written statement of allegations against an employee of the department made by a member of the public or another department employee which alleges one or more of the following:

(A) an infraction of department rules, regulations, or policies; or

(B) an illegal act.

(2) Complainant--A [a] person who files a complaint.

(3) Department--The [the] Texas Department of Public Safety.

(d) Filing a Complaint.

(1) Persons desiring to make a complaint must understand the importance of submitting their complaint in writing with signature affixed. (The Texas Government Code, §614.022 provides that all complaints to be considered on law enforcement officers must be made in writing and signed by the person making the complaint.) If a complainant makes a complaint orally or by e-mail, he or she will be requested to submit the complaint in writing with their signature affixed, and given the necessary form and instructions to file the complaint. Complaint forms may be obtained from any department office or on the internet at the department's web page ([www.dps.texas.gov](http://www.dps.texas.gov)) [[www.txdps.state.tx.us](http://www.txdps.state.tx.us)].

(2) The completed and signed complaint may be filed with the employee's supervisor by United States mail or personal delivery, or by United States mail at Texas Department of Public Safety, Office of Inspector General, 13706 Research Boulevard, Suite 100, Austin, Texas 78750 [Internal Affairs Unit, Box 4087, Austin, Texas 78773-0160].

(3) The name, mailing address, and telephone number of the person to whom the complaint should be directed may be obtained by calling:

(A) the department at its headquarters in Austin, Texas at (512) 424-2000; or

(B) by contacting any department office.

(4) A complaint should contain the following information:

(A) name, mailing address, and telephone number of the complainant;

(B) the name of the employee about which the complaint is being filed or sufficient information to enable the department to identify the employee; and

(C) a concise statement of the nature of the complaint, including all relevant facts.

(5) A summary of the department's complaint investigation process is available on the department's web page. A copy will be provided to any person who requests a complaint form or files a written complaint.

(e) Complaint Investigation and Resolution Procedures.

(1) A complete description of the department's complaint investigation, resolution, and appeal procedures may be found in Chapter 7A of the Department's General Manual which is on file with the Texas State Library and Archives Commission located in Austin, Texas. A summary of this information is available on the department's web site.

(2) All written complaints filed with the department will be investigated thoroughly, objectively, and expeditiously. The com-

plainant will be notified that the complaint is to be investigated, and the complainant will be contacted personally by the investigator if at all possible to discuss the complaint allegations in detail.

(3) The complainant and employee will be informed in writing of the resolution of the complaint.

(4) If the complaint investigation process is not complete within 90 days of the complaint being filed, the complainant and the employee will be notified of the complaint's status on a quarterly basis until final resolution.

(f) Anonymous or Unwritten Complaints. A complainant refusing to file a written complaint or who makes an anonymous complaint, does not necessarily prevent an investigation from being initiated on the facts provided. However, unwritten or anonymous complaints do cause the matter to be more difficult to process to an effective conclusion.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER D. MEDIA AND COMMUNICATIONS POLICIES

### 37 TAC §1.58

The Texas Department of Public Safety (the department) proposes amendments to §1.58, concerning Release of Information on Victims. In an effort to exercise courtesy and respect for human life, these amendments clarify department policy concerning notifying the next of kin of any victim who has died or been seriously injured, before releasing the victim's name to the news media.

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 the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also 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 will be publication of the department's next of kin notification procedure.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Katherine M. Cesinger, Texas Department of Public Safety, 5805 N. Lamar Boulevard, Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3) and §2001.039 are affected by this proposal.

*§1.58. Release of Information on [Crash] Victims.*

~~It is highly desirable to notify next of kin of any victim, who has died or been seriously injured, [the death or serious injury of a crash victim] before releasing the victim's name to the news media. Therefore [However], department personnel [officers] will not release the [withhold, nor advise other officials to withhold] names of such victims to [from] the news media representatives until [øee] the identities of the victims have been fully established and the next of kin have been notified. [In such cases the officer will advise the media representatives that the next of kin have not been notified, leaving usage up to them.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins

General Counsel

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## CHAPTER 9. PUBLIC SAFETY

### COMMUNICATIONS

#### SUBCHAPTER A. DISASTER COMMUNICATIONS

##### 37 TAC §9.3

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

*the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §9.3, concerning Release of Information on Accident Victims. This repeal is being filed simultaneously with the proposal amending §1.58, concerning Release of Information on Victims. The language in §9.3 is substantially similar and duplicative of the language found in §1.58; therefore the repeal of §9.3 is necessary.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal 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 repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be current and updated rules.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Susan Esringel, Texas Department of Public Safety, Office of General Counsel, P.O. Box 4087 (MSC 0140), Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

*§9.3. Release of Information on Accident Victims.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER A. LICENSING REQUIREMENTS

### 37 TAC §15.5

The Texas Department of Public Safety (the department) proposes amendments to §15.5, concerning Learner License. Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect the current requirements as determined by Texas Transportation Code, §521.223. This rule amendment removes the reference to minor restricted driver license (MRDL) or hardship license and clarifies that a learner license may be issued to applicants over 18 years of age.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this 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 this rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be that the department will not issue hardship licenses to persons who have not completed driver education, improving highway safety.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section; and Texas Transportation Code, §521.223.

Texas Government Code, §411.004(3) and §2001.039; and Texas Transportation Code, §521.223 are affected by this proposal.

#### §15.5. *Learner License.*

[(a) A learner license authorizes the driving of the same vehicles authorized by a classified driver license.]

[(b)] A learner license is a regular photo-type [Class] license issued to an applicant [under the age of 18 and restricted to "accompanied by licensed driver age 21 or over in front seat" or Class M license restricted to "licensed motorcycle operator age 21 or over in sight." The standard fee and expiration dates apply to a learner's license].

(1) A Class C learner license is restricted to "accompanied by licensed driver age 21 or over in front seat".

(2) A Class M learner license is restricted to "licensed motorcycle operator age 21 or over in sight".

[(e) Minor restricted driver license (MRDL) or hardship license issued under the hardship provisions will be a photo-type license which expires in 60 days for emergency permits or on the licensee's birth date.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



## SUBCHAPTER K. INTERAGENCY AGREEMENTS

### 37 TAC §15.172

The Texas Department of Public Safety (the department) proposes new §15.172, concerning Issuance by Counties. Texas Transportation Code, §521.008 authorizes the department to create a pilot program allowing the issuance of renewal and duplicate driver licenses, election identification certificates, and personal identification certificates by certain counties. The new rule creates a program wherein the department may enter into memoranda of understanding with counties that meet the pilot program criteria.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this 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 this 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 also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be more outlets available to the public for renewal and duplicate documents which will free resources in driver license field offices to perform other services, thereby decreasing customer wait times.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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 proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.008(d), which authorizes the department to adopt rules to administer this section.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.008 are affected by this proposal.

§15.172. Issuance by Counties.

(a) A county is eligible to enter into a Memorandum of Understanding with the department for the pilot program to issue certain renewal and duplicate driver licenses, personal identification certificates, and election identification certificates if it meets the criteria spelled out in Texas Transportation Code, §521.008(a)(1) - (4).

(b) A county may provide the services outlined in Texas Transportation Code, §521.008(a-1)(1) - (6) if it:

(1) has county employees who have successfully passed the department's background check;

(2) has county employees who have successfully completed the department prescribed training set out in the Memorandum of Understanding; and

(3) conforms to the operating requirements and standards of the Memorandum of Understanding between the department and the county.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 18. DRIVER EDUCATION

### SUBCHAPTER A. COMMERCIAL DRIVER TRAINING SCHOOL TESTING AND ISSUANCE OF LEARNER LICENSE

#### 37 TAC §§18.1 - 18.4

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

The Texas Department of Public Safety (the department) proposes the repeal of §§18.1 - 18.4, concerning Commercial Driver Training School Testing and Issuance of Learner License. Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined an update was necessary. The repeal of this subchapter is filed simultaneously with proposed new Chapter 18, which informs the public of changes to driver education requirements due to laws passed by the Texas Legislature.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal 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 repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that driver education providers will be informed of new requirements and driver education rules will be updated to reflect all recent legislative changes.

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 that 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 en-

vironment 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section; Texas Education Code, Chapter 1001; and Texas Transportation Code, Chapter 521 and Chapter 545.

Texas Government Code, §411.004(3) and §2001.039; Texas Education Code, Chapter 1001; Texas Transportation Code, Chapter 521 and Chapter 545 are affected by this proposal.

§18.1. *Definitions.*

§18.2. *Required Documentation and Application Fee.*

§18.3. *Tests Administered by a Commercial Driver Training School Prior to Issuance of a Learner License.*

§18.4. *Reporting Testing Results.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



### 37 TAC §§18.1 - 18.4

The Texas Department of Public Safety (the department) proposes new §§18.1 - 18.4, concerning issuance and examination requirements for learner and provisional licenses. Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules were necessary to reflect the current requirements as determined by Texas Transportation Code, §§521.1655, 521.205, and 545.424, and Texas Education Code, Chapter 1001. The department approves parent taught driver education courses and new language is necessary to update the rules to reflect legislative changes relating to parent taught driver education providers and instructors and general driver education requirements. These rules also update and clarify language.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are

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 these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that driver education providers will be informed of new requirements and driver education rules will be updated to reflect all recent legislative changes.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, Chapter 1001, and Texas Transportation Code, Chapter 521 and Chapter 545.

Texas Government Code, §411.004(3), Texas Education Code, Chapter 1001, Texas Transportation Code, Chapter 521 and Chapter 545 are affected by this proposal.

§18.1. General Requirements for Driver Education and Issuance of Learner and Provisional Driver Licenses.

(a) Graduated driver licensing requirements apply to all applicants and license holders under 18 years of age.

(b) An applicant who is at least 15 but younger than 18 years of age must enroll in an approved commercial, public, or parent taught driver education program prior to applying for a driver license. Instructors may utilize either the concurrent (teaching classroom and behind the wheel concurrently) or block (completing 32 hours of classroom prior to applying for a license) method of instruction.

(c) When the required hours of classroom driver education instruction are completed, the student must visit a driver license office and complete the requirements to obtain a learner license. To qualify for a learner license, the applicant must be at least 15 but younger than 18 years of age and have completed the first six hours of classroom instruction if enrolled in the concurrent method or 32 hours if enrolled

in the block method. A student must obtain a learner license before beginning any portion of the behind the wheel phase of instruction.

(d) An applicant must be at least 14 years of age to take the classroom phase of any driver education course. The department will not approve a driver license application if any coursework is taught prior to the student's 14th birthday.

(e) Once the student has completed the driver education course, both classroom and behind the wheel, has held a learner license or hardship license for a minimum of six months, and is at least 16 but younger than 18 years of age, he or she may apply for a provisional driver license.

(f) An applicant has three opportunities in a maximum of 90 days to complete and pass all required examinations. Failure to complete the requirements will result in the loss of the application fee. A new fee will be required to restart the application process.

(g) The driver education certificate contains applicable items for certification of classroom or laboratory training, and an affidavit for use by the school when it is impossible to obtain the signature of the certified instructor.

(h) Driver education certificates issued by a jurisdiction or agency other than one of the 50 United States must be approved by a driver license supervisor.

(i) A learner license issued to an applicant who fails to complete the concurrent driver education classroom instruction will be cancelled by the department.

#### §18.2. Requirements for Learner License.

(a) An applicant who is at least 15 and younger than 18 years of age must appear at a driver license office and submit the items detailed in this subsection to receive a learner license:

(1) A completed application for Texas driver license or identification card;

(2) The required application fee;

(3) A high school diploma or its equivalent, or acceptable certification of a high school/GED enrollment and attendance, Texas Education Agency (TEA) Verification of Enrollment (VOE) or the equivalent;

(4) If previously licensed (including an instruction permit or learner license) in another state, the applicant must surrender the license from the other state or sign a department affidavit certifying the license was lost, stolen, or expired;

(5) Proof of liability insurance if the applicant owns a vehicle;

(6) An original social security card or documents meeting the department's social security number requirements;

(7) An original birth certificate or documents meeting the department's identity requirements;

(8) Proof of citizenship or lawful presence in the U.S.;

(9) Proof of Texas residency;

(10) Completed FOR LEARNER LICENSE ONLY portion of the Texas Driver Education Certificate; a student enrolled in parent taught driver education must also present the completed Classroom Instruction Driver Education Affidavit;

(11) An applicant completing a commercial or public school driver education course must also present examination results for written and vision exams if performed by the school; if not admin-

istered by the school, the applicant must take the examinations at the driver license office;

(12) An applicant completing a parent taught driver education course must present the results for the written exam if performed by the course provider;

(13) An applicant completing a parent taught driver education course is required to complete the vision exam at the driver license office; and

(14) Other information as required by the department.

(b) The applicant's photograph, signature, and fingerprints will be taken and included in the permanent driving record maintained by the department.

(c) Driver license office personnel will review the items presented. If the applicant meets all requirements, including passing the required examinations, the department will issue a learner license.

(d) For an applicant enrolled in a parent taught course, the department will check the instructor's driver record at the time of application for the student's learner license. If the instructor is ineligible to teach the course, the learner license will be denied and all instruction time will be forfeited. An instructor with an out of state or country driver license must present a copy of his or her driver record for the preceding 3 years. Out of country driver records are acceptable if translated into English.

(e) A certificate from any state showing completion of an approved course in driver education will be accepted. Applications with certificates showing completion of only classroom instruction may be accepted for a restricted license, and applications with certificates showing completion of both classroom and behind the wheel may be accepted for an unrestricted license.

#### §18.3. Requirements for a Provisional License.

(a) An applicant who is at least 16 and younger than 18 years of age must appear at a driver license office and submit the items detailed in this subsection to receive a provisional license:

(1) Applicant's learner license;

(2) The required application fee;

(3) Completed Texas Driver Education Certificate form; a student enrolled in parent taught driver education must also present the completed Behind the Wheel Instruction Driver Education Affidavit;

(4) Proof of liability insurance if the applicant owns a vehicle;

(5) A high school diploma or its equivalent, or acceptable certification of a high school/GED enrollment and attendance, Texas Education Agency (TEA) Verification of Enrollment (VOE) or the equivalent;

(6) Valid motor vehicle registration and inspection required for the vehicle that will be used for the driving exam;

(7) If previously licensed (including an instruction permit or learner license) in another state, the applicant must surrender the license from the other state or sign a department affidavit certifying the license was lost, stolen, or expired;

(8) An original social security card or documents meeting the department's social security number requirements;

(9) An original birth certificate or documents meeting the department's identity requirements;

(10) Proof of citizenship or lawful presence in the U.S.;

- (11) Proof of Texas residency; and
- (12) Other information as required by the department.

(b) An applicant is required to complete and pass a skills examination at the driver license office or authorized entity.

(c) The applicant's photograph, signature, and fingerprints will be taken and included in the permanent driving record maintained by the department.

(d) Driver license office personnel will review the items presented. If the applicant meets all requirements, including passing the required examinations, the department will issue a provisional license.

(e) For an applicant enrolled in a parent taught driver education course, the department will check the instructor's driver record at the time of application for the student's provisional license. If the instructor is ineligible to teach the course, the provisional license will be denied and all instruction time will be forfeited. An instructor with an out of state or country driver license must present a copy of his or her driver record for the preceding 3 years. Out of country driver records are acceptable if translated into English.

(f) A certificate from any state showing completion of an approved course in driver education will be accepted. Applications with certificates showing completion of only classroom instruction may be accepted for a restricted license, and applications with certificates showing completion of both classroom and behind the wheel may be accepted for an unrestricted license.

§18.4. Examinations Administered by a Driver Education School or Parent Taught Driver Education Course Provider.

(a) Prior to application for a learner license, the commercial, public or parent taught driver education course provider may administer the Class C Road Signs exam and the Class C Road Rules exam to each student. The student must achieve a score of at least 70% on each exam to pass. The commercial or public driver education school may administer the vision exam. Applicants completing a parent taught driver education course are required to take and pass the vision exam at a driver license office. The driver education school will administer the exams in accordance with the guidelines detailed in this subsection:

(1) Vision. A suitable device that utilizes the Snellen Method of Measurement and American Medical Association (AMA) Visual Efficiency Rating for accurately measuring the student's visual acuity is required and must be used in a manner consistent with the procedures prescribed by the device manufacturer. The results of the student's visual acuity will be recorded on the Texas Driver Education Certificate. Upon presentation of the certificate, the driver license office personnel will evaluate the exam results and if vision limitations are present, add the proper restriction(s) to the learner license. A student with obvious visual problems shall be referred to the driver license office for examination and any necessary referrals to a vision specialist.

(2) Class C Road Signs and Class C Road Rules Examinations. The driver education school or parent taught driver education course provider will obtain the exams from the Texas Department of Public Safety, General Stores. The exams will be available in English and Spanish. Other languages and oral exams must be referred to a driver license office. Exam results will be recorded on the Texas Driver Education Certificate. No student shall be examined prior to his or her 15th birthday.

(3) No review prior to examination. Tests may not be reviewed prior to examination. The driver education school or parent taught driver education course provider may review exams after completion, but may not provide copies of the exam to the student.

(b) The Texas Driver Education Certificate shall be completed and dated on the same day examination is completed. The certificate will serve as verification to the department that the student has met the training and examination requirements.

(c) The actual exams or electronic record of all exams shall be maintained by the driver education school or parent taught driver education course provider as part of the permanent student instruction record. These records must be available for inspection and review by department or Texas Education Agency (TEA) personnel for a period of three years from the date of the exams.

(d) A parent taught driver education course provider that discontinues operation shall notify the department in writing and provide student records to the department or ensure access for the required period.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Earliest possible date of adoption: April 6, 2014  
For further information, please call: (512) 424-5848



## SUBCHAPTER B. PARENT TAUGHT DRIVER EDUCATION

### 37 TAC §18.11

The Texas Department of Public Safety (the department) proposes new §18.11, concerning Parent Taught Driver Education. Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules were necessary to reflect the current requirements as determined by Texas Transportation Code, §§521.1655, 521.205, and 545.424, and Texas Education Code, Chapter 1001. The department approves parent taught driver education courses and new language is necessary to update the rules to reflect legislative changes relating to parent taught driver education providers and instructors and general driver education requirements. The rule also updates and clarifies language.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this 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 this 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 also 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 will be that driver education providers will be informed of new requirements and

driver education rules will be updated to reflect all recent legislative changes.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLRuleComments@dps.texas.gov](mailto:DLRuleComments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, Chapter 1001, and Texas Transportation Code, Chapter 521 and Chapter 545.

Texas Government Code, §411.004(3), Texas Education Code, Chapter 1001, Texas Transportation Code, Chapter 521 and Chapter 545 are affected by this proposal.

§18.11. Parent Taught Driver Education.

(a) Prior to teaching a department approved parent taught driver education course, an instructor must submit a completed Request for Parent Taught Driver Education Information Packet form with a non-refundable fee to the Texas Department of Public Safety. A Parent Taught Driver Education Information packet will be provided to the requestor.

(b) The Parent Taught Driver Education Information packet is not a driver education course and does not contain the required materials (i.e. lesson plans and other resources) necessary to teach the parent taught driver education course. The instructor must obtain one of the department approved parent taught driver education courses to fulfill program requirements.

(c) The parent taught driver education course provider will provide a numbered Texas Driver Education Certificate.

(d) The parent taught driver education program includes both classroom and behind the wheel phase instruction. The instructor may teach both or utilize a commercial or public driver education school for either phase. However, a student cannot transfer hours between the parent taught program and a commercial or public driver education school. All 32 hours of classroom instruction must be taught under one program; either parent taught or a commercial or public driver education school. The 44 hours of laboratory (behind the wheel) instruction must be taught under one program; either parent taught or a commercial or public driver education school. All previous driver education hours must be repeated if the method of instruction changes prior to completion of either phase.

(e) The required 32 hours of classroom driver education instruction may be taught either as an entire block prior to any portion of the behind the wheel phase or concurrently with the behind the wheel phase. If taught concurrently, the student must complete the first six hours of the classroom driver education instruction prior to the instruction of any of the behind the wheel phase and prior to issuance of a learner license.

(f) The classroom location should be comfortable and have an atmosphere conducive to learning. No more than 640 minutes of the required hours of classroom instruction delivered via multimedia may be counted. Instructors may utilize more hours of multimedia instruction, but it may not be counted as part of the required hours.

(g) Behind the wheel driver education instruction may be conducted in any vehicle that is legally operated with a Class C driver license on a Texas highway.

(h) Behind the wheel driver education instruction may begin after the student receives a learner license. The required curriculum that must be followed includes: minimum of 44 hours; 7 hours behind the wheel instruction in the presence of an instructor; 7 hours of in-car observation in the presence of an instructor; and 30 hours of behind the wheel instruction, including at least 10 hours at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). The additional 30 hours must be verified by a parent or guardian.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400844

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



**37 TAC §§18.21 - 18.25**

*(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §§18.21 - 18.25, concerning Parent Taught Driver Education. Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined an update was necessary. The repeal of this subchapter is filed simultaneously with proposed new Chapter 18 and is necessary to inform the public of changes to driver education requirements due to laws passed by the Texas Legislature.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal 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 repeal as proposed. There is no anticipated economic cost to individuals who are required to comply

with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that driver education providers will be informed of new requirements and driver education rules will be updated to reflect all recent legislative changes.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section; Texas Education Code, Chapter 1001; and Texas Transportation Code, Chapter 521 and Chapter 545.

Texas Government Code, §411.004(3) and §2001.039; Texas Education Code, Chapter 1001; Texas Transportation Code, Chapter 521 and Chapter 545 are affected by this proposal.

§18.21. *Obtaining Materials for Parent Taught Course.*

§18.22. *Classroom Training.*

§18.23. *Application for a Learner License.*

§18.24. *Behind-the-Wheel Instruction.*

§18.25. *Obtaining Provisional License.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400841

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848

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## SUBCHAPTER C. DEPARTMENT APPROVED DRIVER EDUCATION COURSE

### 37 TAC §18.21, §18.22

The Texas Department of Public Safety (the department) proposes new §18.21 and §18.22, concerning Department Approved Driver Education Course. Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined an update to these rules were necessary to reflect the current requirements as determined by Texas Transportation Code, §§521.1655, 521.205, and 545.424; and Texas Education Code, Chapter 1001. The department approves parent taught driver education courses and new language is necessary to update the rules to reflect legislative changes relating to parent taught driver education providers and instructors and general driver education requirements. These rules also update and clarify language.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are 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 these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be that driver education providers will be informed of new requirements and driver education rules will be updated to reflect all recent legislative changes.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to



adopt rules considered necessary for carrying out the department's work; Texas Education Code, Chapter 1001; and Texas Transportation Code, Chapter 521 and Chapter 545.

Texas Government Code, §411.004(3); Texas Education Code, Chapter 1001; and Texas Transportation Code, Chapter 521 and Chapter 545 are affected by this proposal.

§18.21. Submission of Course for Department Approval.

(a) Entities requesting parent taught driver education course evaluation for department approval must submit the complete course curriculum and copies of all materials to: Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773, Attention: Parent Taught Driver Education.

(b) If the curriculum and all materials meet or exceed the minimum standards set forth in Texas Transportation Code, §521.205, the department will approve the course. The course will be added to the list of approved courses as soon as practical.

(c) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials will require submission for approval according to subsection (a) of this section.

(d) A written request is required within 30 days if there is any change relating to an approved course, including contact information, company name, and course titles. Updated information will be included as soon as practical.

(e) The department will retain submitted materials according to the department's retention schedule.

(f) The department has authority to require course reapproval due to changes in parent taught driver education curriculum requirements, state law, or administrative rules. The department will notify the parent taught driver education course provider when reapproval is required. The course provider will have 90 days from the date of notification to submit the requested information. Failure to adequately respond within the required time will result in cancellation of the course approval. The department will review the course material and make a determination as to adoption in a timely manner.

(g) Submission of internet courses shall comply with the requirements for domain names detailed in this subsection:

(1) Each school or parent taught driver education course provider offering an alternative delivery method (ADM) must offer that ADM from a single domain. The ADM may accept students who are redirected to the ADM's domain only if the student is redirected to the webpage that clearly identifies the course provider and school offering the ADM before the student begins the registration process, supplies any information, or pays for the course.

(2) Subdomains of the ADM's single domain may also accept students as long as the subdomains are registered to and hosted by the ADM, and clearly identify the official course provider, school name, and the PTDE course number.

(h) A parent taught driver education course submitted for department review may be denied upon finding:

(1) that the course does not meet the standards required under Texas Transportation Code, §521.205; or

(2) the materials used were not approved by the department.

(i) A notice of denial will be sent to requesting entity. The requesting entity will have 90 days to correct the noted deficiencies. If the requesting entity fails to meet approval criteria, the course will be

denied. If a course is denied by the department, the requesting entity must wait 30 days before submitting a new parent taught driver education course for approval by the department.

§18.22. Cancellation of Department Approval.

(a) A department approved parent taught driver education course may have its approval cancelled upon a finding:

(1) That the course does not meet the standards required under Texas Transportation Code, §521.205;

(2) The materials used were not approved by the department; or

(3) After notice, the program has not been reapproved as required by §18.21(f) of this title (relating to Submission of Course for Department Approval).

(b) Prior to cancellation, the department will allow the parent taught driver education course provider 90 days from the date of notification the opportunity to correct the noted deficiencies in the curriculum and remove the non-approved material.

(1) Failure to adequately respond within the required time will result in cancellation of the course.

(2) If the parent taught driver education course is cancelled by the department, all course information will be removed from the Parent Taught Driver Education packet and the department's website immediately.

(3) If a parent taught driver education course is cancelled by the department, the entity must wait 30 days before submitting a new Parent Taught Driver Education Course for approval by the department.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201400845

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



**37 TAC §§18.31 - 18.33**

*(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §§18.31 - 18.33, concerning Department Approved Driver Education Courses. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update was necessary. The repeal of this subchapter is filed simultaneously with proposed new Chapter 18 and is necessary to inform the public of changes to driver education requirements due to laws passed by the Texas Legislature.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal 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 repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that driver education providers will be informed of new requirements and driver education rules will be updated to reflect all recent legislative changes.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to [DLDrulecomments@dps.texas.gov](mailto:DLDrulecomments@dps.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section; Texas Education Code, Chapter 1001, and Texas Transportation Code, Chapter 521 and Chapter 545.

Texas Government Code, §411.004(3), §2001.039, Texas Education Code, Chapter 1001, Texas Transportation Code, Chapter 521 and Chapter 545 are affected by this proposal.

§18.31. *Requirements for Approval of Course.*

§18.32. *Submission of Course for Departmental Approval.*

§18.33. *Cancellation of Department Approval.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 424-5848

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## CHAPTER 27. CRIME RECORDS

### SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

#### 37 TAC §27.1

The Texas Department of Public Safety (the department) proposes amendments to §27.1, concerning Right of Review. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect current procedures for the personal review of criminal history record information. Additional non-substantive changes were made to correct formatting errors in this section.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this 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 this 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 also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be publication of the current procedures for the personal review of criminal history record information.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Angie Kendall, Texas Department of Public Safety, Law Enforcement Support, 5805 N. Lamar Boulevard, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.083(b)(3), which requires the department to grant access to criminal history record information to the person who is the subject of the information; §411.086, which requires the department to adopt rules that provide for a uniform method of requesting criminal history record information from the department; and §2001.039, which requires state agencies to review

their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §§411.004(3), 411.083(b)(3), 411.086, and 2001.039 are affected by this proposal.

*§27.1. Right of Review.*

(a) It is the policy of the Texas Department of Public Safety (the department) that a person may access and receive a copy of criminal history record information maintained by the department that relates to the person upon payment of a fee as authorized by Texas Government Code, §411.088 ~~Texas Government Code~~. A person with criminal history record information on file with the Federal Bureau of Investigation (FBI) must contact the Special Correspondence Bureau of the FBI at (304) 625-3878 to review or correct those records. In this section, "criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations and other formal criminal charges and their dispositions. This term does not include identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system or driving record information maintained by the department under Texas Transportation Code, Chapter 521, Subchapter C ~~Chapter 521, Transportation Code~~.

(b) A person may personally appear at ~~[the Texas Department of Public Safety, Criminal History and Fingerprint Services,] 108 Denson Drive, Austin, Texas 78752 during normal business hours and request their [the person's] criminal history record information as detailed in this subsection [follows]:~~

(1) The person must present a government issued photo identification document, be fingerprinted by a designee of the department to establish identification and provide the items detailed in this paragraph [following information]:

(A) the person's complete ~~[printed] name (Last, First, Middle) [LAST, FIRST, MIDDLE]~~, including any other names used by the person; and

(B) the person's sex, race and date of birth ~~(Month, Day, Year) [MONTH, DAY, YEAR]~~.

(2) The person must remit a personal check, ~~[U.S.] money order, or cash [or other method of payment accepted by the department] in the amount of \$24.95 (\$9.95 fingerprint acquisition fee [L-1 Enrollment Services Fingerprint Fee] and \$15 Texas Record Check Fee per fingerprint submission[-]).~~

(3) Results will be available for pick up within two business days at 108 Denson Drive, Austin, Texas 78752.

(4) If a person needs a certified letter to accompany the criminal history response it will be provided upon request.

~~[(3) Upon receipt of a request described by this subsection and the required fee, the department will conduct a fingerprint based search of the Texas Computerized Criminal History Database. If criminal history record information relating to the person is located, the department will provide the person with a printout of the information. If criminal history record information relating to the person is not located, a certified letter will be provided to the person stating, "No record on file". The department will provide the person with the results of the search at Texas Department of Public Safety, Criminal History and Fingerprint Services, 108 Denson Drive, Austin, Texas 78752 after 3:00 p.m. on the next business day after the day the department receives the request.]~~

(c) A person may find appointment and DPS fingerprinting locations, by visiting [www.dps.texas.gov/administration/crime\\_records/pages/applicantfingerprintservices.htm](http://www.dps.texas.gov/administration/crime_records/pages/applicantfingerprintservices.htm) and provide the items detailed in this subsection:

(1) Biographical Data.

(A) the person's complete name (Last, First, Middle), including any other names used by the person; and

(B) the person's sex, race and date of birth (Month, Day, Year).

(2) Fee. The person may pay the \$24.95 online or over the phone via credit card. In addition, the person may wait to submit payment until the time of fingerprinting via personal check or money order. Cash and credit cards are not accepted at field locations.

(3) Identification. At the field location, the person must present a government issued photo identification document and be fingerprinted by a designee of the department to establish identification.

(4) Results. The criminal history results and a certified letter will be delivered to the address designated during scheduling within 7 to 10 business days.

(d) A person residing out of state can submit their fingerprints by completing the forms and following the instructions for "Fingerprints Submitted By Mail" at [www.dps.texas.gov/internet-forms/Forms/CR-63.pdf](http://www.dps.texas.gov/internet-forms/Forms/CR-63.pdf).

(1) Identification. When attending a law enforcement agency or FAST Provider near you, the person must present a government issued photo identification document and be fingerprinted by a designee of the department to establish identification.

(2) Results. The criminal history results and a certified letter will be delivered to the address designated during scheduling within 10 to 14 business days.

(3) Illegible prints or incomplete information. Fingerprint cards with illegible prints or incomplete information will be returned to the address provided.

~~[(e) A person who is unable to personally appear at the Criminal History and Fingerprint Services office in Austin may request the person's criminal history record information as follows:]~~

~~[(1) The person must be fingerprinted by a criminal justice agency or other entity on a department approved fingerprint card, or by the department approved electronic fingerprint submission vendor. The criminal justice agency, other entity or the department approved vendor for the electronic submission of fingerprints must establish the person's identity by requiring the person to produce a government issued photo identification document.]~~

~~[(2) The criminal justice agency or other entity must include the following identifying information of the person on the fingerprint card:]~~

~~[(A) the person's complete name (LAST, FIRST, MIDDLE), including any other names used by the person;]~~

~~[(B) the person's sex, race and date of birth (MONTH, DAY, YEAR); and]~~

~~[(C) a complete, legible set of ten rolled fingerprints and simultaneous impressions taken from the person.]~~

~~[(3) If the person mails the completed fingerprint card, a signed, written request that the department search the criminal history files for criminal history record information relating to the person and a check or U.S. money order in the amount of \$15 per finger-~~

print card must be submitted to Crime Records Service, Attn: Criminal History Inquiry Unit, Texas Department of Public Safety, P.O. Box 15999, Austin, Texas 78761-5999. The written request must include the printed name, phone number and return mailing address of the person designated to receive the criminal history results.}]

[(4) Fingerprint cards with illegible prints or incomplete information will be returned to the address provided in the written request for proper re-submission. When re-submitting fingerprints, the rejected card must be included with the re-submission.}]

[(5) Upon receipt of a request described by this subsection and the required fee, the department will conduct a fingerprint based search of the Texas Computerized Criminal History Database. If criminal history record information relating to the person is located, a print-out of the information and the requesting letter will be returned to the designee. If criminal history record information relating to the person is not located, a certified letter will be returned to the designee stating, "No record on file" and the requesting letter will be returned to the person.}]

(c) [(d)] If a person believes criminal history record information maintained by the department relating to the person is incorrect or incomplete, the person may visit: [www.dps.texas.gov /administration/crime\\_records/pages/errorresolution.htm](http://www.dps.texas.gov/administration/crime_records/pages/errorresolution.htm) and complete the required forms [contact the Error Resolution Unit at P.O. Box 4143, Austin, Texas 78765-4143 or [ErrorResolution@txdps.state.tx.us](mailto:ErrorResolution@txdps.state.tx.us)].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201400846

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER E. JUVENILE JUSTICE INFORMATION SYSTEM

### 37 TAC §27.55, §27.63

The Texas Department of Public Safety (the department) proposes amendments to §27.55 and §27.63, concerning Juvenile Justice Information System. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to these sections were necessary to remove references to the Texas Youth Commission (TYC). On December 1, 2011, the Texas Youth Commission was abolished and the Texas Juvenile Justice Department (TJJD) was created. Amendments replace the reference to TYC with TJJD. Additional amendments in §27.63 are necessary to add the ability to release juvenile justice data to a county, justice, and a municipal court exercising jurisdiction over a juvenile pursuant to Texas Family Code, §54.021.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are 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 these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be current and updated rules.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Angie Kendall, Texas Department of Public Safety, Law Enforcement Support, 5805 N. Lamar Boulevard, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section; and Texas Family Code, §§58.001 - 58.113.

Texas Government Code, §411.006(4) and §2001.039 and Texas Family Code, §§58.001 - 58.113 are affected by this proposal.

§27.55. *Specific Information Collected in the Juvenile Justice Information System.*

(a) The department shall assign codes for the reporting of data to the juvenile justice information system. The department shall designate and distribute a list of uniform offense codes to be used in reporting data to the juvenile justice information system. The department has the sole responsibility for designating the state identification number for each juvenile whose name appears in the juvenile justice information system. The department will, upon receipt of fingerprint submissions of juvenile offender data, assign unique state identification numbers to each juvenile offender reported to the juvenile justice information system.

(b) To the extent possible, and subject to the [above] list of types of information collected in subsection (a) of this section, local law enforcement and juvenile justice agencies shall report, and the department shall include in the juvenile justice information system the following information for each juvenile offender referred under the Texas Family Code, Title 3, Chapter 58, §§58.101 - 58.113 for delinquent conduct:

(1) the juvenile offender's name, including other names by which the juvenile offender is known or has used;

(2) the juvenile offender's date and place of birth, including alias dates of birth used by the offender;

(3) the juvenile offender's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(4) the juvenile offender's state identification number, and other numbers as identified on the uniform incident fingerprint card as designed by the department for reporting to the juvenile justice information system, including alias identifying numbers;

(5) the juvenile offender's fingerprints, which shall be stored in the statewide automated fingerprint identification system;

(6) the juvenile offender's last known residential address, from which the department shall determine the census tract number designation, if possible;

(7) the name and identifying number as assigned by the Federal Bureau of Investigation of the agency that took into custody or detained the juvenile offender;

(8) the date of detention or custody;

(9) the conduct for which the juvenile offender was taken into custody, detained, or referred, including level and degree of the alleged offense;

(10) the name and identifying number as assigned by the Federal Bureau of Investigation of the juvenile intake agency or juvenile probation office;

(11) each disposition by the juvenile intake agency or juvenile probation office, as identified by codes assigned by the department;

(12) the date of disposition by the juvenile intake agency or juvenile probation office;

(13) the name and identifying number as assigned by the Federal Bureau of Investigation of the prosecutor's office;

(14) each disposition by the prosecutor;

(15) the date of disposition by the prosecutor;

(16) the name and identifying number as assigned by the Federal Bureau of Investigation of the court;

(17) each disposition by the court, as identified by codes assigned by the department, including information concerning custody of a juvenile offender by a juvenile justice agency or probation;

(18) the date of disposition by the court;

(19) any commitment or release under supervision by the Texas Juvenile Justice Department [~~Youth Commission~~];

(20) the date of any commitment or release under supervision by the Texas Juvenile Justice Department [~~Youth Commission~~]; and

(21) a description of each appellate proceeding, as identified by codes assigned by the department.

(c) Local agencies are not required to report, nor is the department required to maintain dispositions that represent administrative status notices of a juvenile justice agency.

#### §27.63. Confidentiality.

Except as provided in paragraphs (1) - (6) [(5)] of this section information contained in the juvenile justice information system is confidential

information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Texas Government Code, §411.083;

(3) to a juvenile justice agency;

(4) to the Criminal Justice Policy Council and<sup>[-]</sup> the Texas Juvenile Justice Department [~~Youth Commission~~, and the Texas Juvenile Probation Commission] for analytical purposes; ~~or~~

(5) to the juvenile<sup>[-]</sup> or juvenile's authorized representative as provided in the Texas Public Information [Open Records] Act; ~~or~~<sup>[-]</sup>

(6) to a county, justice, or municipal court exercising jurisdiction over a juvenile, including a court exercising jurisdiction over a juvenile under Texas Family Code, §54.021.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400847

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER G. TEXAS HELP END AUTO THEFT

### 37 TAC §§27.81 - 27.89

*(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 Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §§27.81 - 27.89, concerning Texas Help End Auto Theft. Pursuant to Texas Government Code, §2001.039, the department reviewed this chapter and determined the reasons for initially adopting these rules no longer exist. The Texas Help End Auto Theft program is no longer in operation at the department; therefore, this subchapter is obsolete.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeal 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 repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be current and updated rules.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Susan Estringel, Texas Department of Public Safety, Office of General Counsel, P.O. Box 4087 (MSC 0140), Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.006(4) and §2001.039 are affected by this proposal.

§27.81. *Authority.*

§27.82. *Provisions of Texas H.E.A.T. Program.*

§27.83. *Law Enforcement Agency Participation.*

§27.84. *Vehicle Owner Participation.*

§27.85. *Private Enterprise Participation.*

§27.86. *Registration.*

§27.87. *Agency Responsibilities.*

§27.88. *Renewal.*

§27.89. *Supplies.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400849

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 424-5848



## SUBCHAPTER I. SECURE ELECTRONIC MAIL, ELECTRONIC TRANSMISSIONS AND FACSIMILE TRANSMISSIONS

### 37 TAC §27.111

The Texas Department of Public Safety (the department) proposes amendments to §27.111, concerning Minimum Standards. Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to remove an invalid link and make additional non-substantive changes for clarity and conformity.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this 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 this 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 also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of enforcing this rule will be current and updated rules.

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 that 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 proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Angie Kendall, Texas Department of Public Safety, Law Enforcement Support, 5805 N. Lamar Boulevard, Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.006(4) and §2001.039 are affected by this proposal.

§27.111. *Minimum Standards.*

(a) The minimum standards contained in this title apply to secure electronic mail, electronic transmissions and facsimile transmissions arising under the provisions of Texas Government Code, §411.081.

(b) The minimum standards for each method of transmission are detailed in this subsection [ as follows]:

(1) Secure Electronic Mail--To secure electronic mail and any attachments, the email and the attachments are required to be encrypted using either the Advanced Encryption Standard (AES) or the Triple Data Encryption Standard (3DES) encryption algorithms with a key length of at least 128 bits.

(2) Electronic Transmissions--To transmit a file electronically, the data are required to be encrypted using either the Advanced Encryption Standard (AES) or the Triple Data Encryption Standard (3DES) encryption algorithms with a key length of at least 128 bits.

(3) Facsimile Transmissions--To transmit the file by a facsimile machine, the sender is required to first call the recipient and confirm the person is standing at the facsimile machine or the facsimile machine is located in a secure area, and will ensure that once received, the information will not be exposed to unauthorized viewing or disclosure. After the sender confirms the receiver is ready, the facsimile transmission may start.

(c) Examples of acceptable implementations conforming to the [above] minimum standards detailed in subsection (b) of this section may be obtained directly from the Crime Records Service CJIS Security Office [or electronically from the World Wide Web at [http://txdps\\_ga/administration/crime\\_records/pages/securetransmissions.htm](http://txdps_ga/administration/crime_records/pages/securetransmissions.htm)].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201400848

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 424-5848



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

##### SUBCHAPTER H. ADVERTISING

###### 43 TAC §§215.244 - 215.246, 215.250, 215.269

The Texas Department of Motor Vehicles (department) proposes amendments to §215.244, Definitions; §215.245, Availability of Vehicles; §215.246, Accuracy; §215.250, Dealer Price Advertising; and §215.269, Finding of Violation; relating to motor vehicle advertising.

#### EXPLANATION OF PROPOSED AMENDMENTS

The department proposes the amendments pursuant to Government Code, §2001.021, which provides an interested party may petition a state agency to initiate a rulemaking proceeding, and

43 TAC §206.41, Petition, which provides any interested person may petition the department requesting the adoption of a rule. The Texas Automobile Dealers Association (TADA) petitioned for rule amendments to address advertising concerns. Also, the proposed amendments implement House Bill 2741, 83rd Legislature, Regular Session, 2013.

The proposed amendments to §215.244 add "representation" to the definition of advertising. Expanding the definition clarifies that any type of representation, as opposed to just a statement, used to solicit business is considered an advertisement and subject to the rules in the subchapter. A graphic or pictorial representation could include photographs, charts, graphs, and other depictions. The amendments also clarify that direct communications, including in-person, telephonic and e-mail communications, between a dealer or the dealer's representative and a prospective purchaser do not constitute advertising. The proposed amendments also revise or delete some unnecessary definitions for consistency with other department rules.

The proposed amendments to §215.245 prohibit a dealer from advertising a specific new vehicle or line-make of vehicles not in the dealer's possession without a conspicuous disclosure that the vehicle or line-make is not in the possession of the dealer.

The proposed amendments to §215.246 clarify that both statements and representations in an advertisement shall be accurate, clear, and conspicuous; and shall not be false, deceptive, or misleading. The amendment is necessary to address situations where photographs or other depictions are used in advertisements and the vehicle is not in the inventory of the dealer, but is actually in the inventory of another dealer. Such advertisements are not accurate depictions of the advertising dealer's inventory, are false in representing that the advertised vehicle is in the inventory of the advertising dealer, and deceive and mislead consumers. The amendment is also necessary to address advertisements where the advertising dealer makes statements or representations that misrepresent its affiliation with another dealer or line-make.

The proposed amendments to §215.250 retitle the section and clarify the fees that may be excluded from the advertised price of a motor vehicle by deleting a reference to a statute that has been repealed. The amendments also prohibit the advertising of "Internet price," "e-price," or similar terms that create the impression there is a different or unique sales price for Internet or on-line consumers or transactions.

The proposed amendments to §215.269 provide that no person will be held in violation of the rules except upon a finding by the board of the Texas Department of Motor Vehicles (board), and after notice and opportunity for hearing. House Bill 2741 removed the requirement that an actual hearing be held, requiring instead an opportunity for a hearing. In addition, §215.58 authorizes the board to delegate final order authority for a number of types of cases, including some advertising cases.

The business of buying, selling, and exchanging motor vehicles is of vital importance to the economy of the state of Texas and it is essential that the public have confidence in the oversight and regulation of the industry. The department considers it important that statements and representations used in advertisements be accurate, clear, and conspicuous, and the use of "Internet price," "e-price," and similar wording in advertising be prohibited. Advertisements that are not accurate, clear, and conspicuous or that have the potential to create false impressions in the minds of the consumers create opportunities for profiting from fraudulent

or deceptive practices in motor vehicle transactions. Consumers who may be victims of deceptive, fraudulent, and illegal acts by persons in the business of selling motor vehicles can experience serious financial harm.

The proposed amendments also include nonsubstantive changes to correct punctuation and grammar.

#### FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

William P. Harbeson, Director of the Enforcement Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be improved efficiency in disciplining persons alleged to have violated these rules and the statutes enforced by the department. The reputation and business practices of the motor vehicle industry may improve and the public's confidence in motor vehicle dealers and other licensees may rise. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or individuals.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on April 7, 2014.

#### STATUTORY AUTHORITY

These amendments are proposed under Government Code, §2001.021, which authorizes the department to initiate a rulemaking proceeding; Occupations Code, §2301.155 and Transportation Code, §1002.001, which provide the board with the authority to establish rules that are necessary and appropriate to implement the powers and duties of the department; and more specifically, Transportation Code, §1002.002, which authorizes the board to adopt rules to prohibit false, misleading, or deceptive advertising; Occupations Code, §2301.351(3), which prohibits a dealer from using false, deceptive, or misleading advertising relating to the sale or lease of motor vehicles; and Occupations Code, §2301.456(1), which prohibits a manufacturer, distributor, or representative from using false, deceptive, or misleading advertising.

#### CROSS REFERENCE TO STATUTE

Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapter 1002.

#### §215.244. Definitions.

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

(1) Advertisement--An oral, written, graphic, or pictorial statement or representation made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an on-line [computer] service, or on television. The term does not include direct communication between a dealer or dealer's representative and a prospective purchaser. [an in-person oral communication by a dealer's employee with a prospective purchaser.]

(2) Advertising provision--

(A) A provision of the Code relating to the regulation of advertising; or

(B) A [a] rule relating to the regulation of advertising adopted pursuant to the authority of the Code.

(3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain leads to persons interested in buying or leasing merchandise of the type advertised and to switch consumers from buying or leasing the advertised product in order to sell or lease some other product at a higher price or on a basis more advantageous to the advertiser.

(4) Balloon payment--Any scheduled payment made as required by a consumer credit transaction that is more than twice as large as the average of all prior scheduled payments except the down payment.

(5) Buyers guide--A form as required by the Federal Trade Commission under 16 Code of Federal Regulations, Part 455. This form is to be completed and displayed on the side window of a vehicle that has been driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer.

(6) Clear and conspicuous--The statement, representation, or term being disclosed is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning.

[(7) Code--Occupations Code, Chapter 2301.]

(7) [(8)] Dealership addendum--A form which is to be displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a vehicle for delivery to a buyer. The addendum is to disclose:

(A) that it is supplemental;

(B) any added feature, service, equipment, part, or accessory charged and added by the dealership and the retail price therefore;

(C) any additional charge to the selling price such as additional dealership markup; and

(D) the total dealer selling price. The dealership addendum form shall not be deceptively similar in appearance to the manufacturer's label, which is required to be affixed by every manufacturer



to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act.

(8) [(9)] Demonstrator--A new motor vehicle that is currently in the inventory of the automobile dealership and used or has been used primarily for test drives by customers and other dealership purposes and so designated by the dealership.

(9) [(10)] Disclosure--Required information that is clear, conspicuous, and accurate.

(10) [(11)] Factory executive/official vehicle--A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

[(12) Internet--A system that connects computers or computer networks.]

(11) [(13)] Licensee--Any person required to obtain a license from the department. [Motor Vehicle Division.]

(12) [(14)] Manufacturer's label--The label required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231 - 1233, to be affixed by the manufacturer to the windshield or side window of each new automobile delivered to the dealer.

(13) [(15)] On-line service--A network that connects computer users.

(14) [(16)] Rebate or cash back--A sum of money refunded to a purchaser or for the benefit of the purchaser after full payment has been rendered. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to himself or for his benefit subsequent to payment in full.

(15) [(17)] Subsequent violation--Conduct that is the same or substantially the same as conduct the Board has previously alleged to be a violation of an advertising provision.

§215.245. *Availability of Vehicles.*

(a) A licensee may advertise a specific new vehicle or line-make [line make] of vehicles for sale if: ]

[(1)] the specific vehicle or line-make [line] is in the possession of the licensee at the time the advertisement is placed, or if the specific vehicle or line-make is not in the possession of the licensee at the time the advertisement is placed, the licensee clearly and conspicuously discloses that fact in the advertisement and states that the vehicle may be obtained from the manufacturer, distributor, [or distributor] or some other source, and this information is clearly and conspicuously disclosed in the advertisement]; and

(1) [(2)] the [price] advertisement sets forth the number of vehicles available at the advertised price, if a price is advertised, at the time the advertisement is placed; or

(2) a dealer can show he has available a reasonable expectable public demand based on prior experience.

(b) If an advertised price [In addition, if an advertisement] pertains to only one specific vehicle, then the advertisement must also disclose the vehicle's stock number or vehicle identification number.

(c) [(b)] This section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

(d) [(e)] A motor [Motor] vehicle dealer [dealers] may advertise a specific used vehicle [or vehicles] for sale if:

(1) the [The] specific used vehicle [or vehicles] is in the possession of the dealer at the time the advertisement is placed; and

(2) the [The] title certificate to the used vehicle has been assigned to the dealer.

§215.246. *Accuracy.*

All advertisements [advertised statements] shall be accurate, clear, and conspicuous and shall not be false, deceptive, or misleading.

§215.250. *Dealer Price Advertising; Internet or E-Pricing.*

(a) When featuring an advertised sale price of a new or used motor vehicle, the dealer must be willing to sell the vehicle for such advertised price to any retail buyer. The advertised sale price shall be the price before the addition or subtraction of any other negotiated items. The only charges that may be excluded from the advertised price are:

(1) any registration, certificate of title, or license fees[, or an additional registration fee, if any, charged by a full service deputy as provided by Transportation Code, §502.114];

(2) any taxes; and

(3) any other fees or charges that are allowed or prescribed by law.

(b) A qualification may not be used when advertising the price of a vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(c) If a price advertisement discloses a rebate, cash back, or discount savings claim, the price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

(1) If an advertisement discloses a discount savings claim, this incentive must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP). The following is an acceptable format for advertising a price with a discount savings claim.  
Figure: 43 TAC §215.250(c)(1) (No change.)

(2) If an advertisement discloses a rebate, this incentive must be disclosed as a deduction from the advertised price. The following is an acceptable format for advertising a price with a rebate.  
Figure: 43 TAC §215.250(c)(2) (No change.)

(3) If an advertisement discloses both a rebate and a discount savings claim, the incentives must be disclosed as a deduction from the MSRP. The following is an acceptable format for advertising a price with a rebate and a discount savings claim.  
Figure: 43 TAC §215.250(c)(3) (No change.)

(d) In the event that the manufacturer offers a discount on a package of options, then that discount should be disclosed above or prior to the MSRP with a total price of the vehicle before option discounts. The following is an acceptable format.  
Figure: 43 TAC §215.250(d) (No change.)

(e) If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in subsection (c) of this section first and then the nature of the limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format.  
Figure: 43 TAC §215.250(e) (No change.)

(f) Advertising an "Internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an on-line or Internet consumer or transaction is prohibited.

§215.269. *Finding of Violation.*

No person shall be held in violation of the rules, including the general prohibition, except upon a finding thereof made by the Board, after the filing of a complaint and notice and an opportunity for hearing as provided in the Code. [Occupations Code, Chapter 2301.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2014.

TRD-201400850

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: April 6, 2014

For further information, please call: (512) 467-3853



# 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 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

#### SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

##### 31 TAC §65.328

The Texas Parks and Wildlife Department withdraws the proposed amendment to §65.328, which appeared in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9209).

Filed with the Office of the Secretary of State on February 19, 2014.

TRD-201400773

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: February 19, 2014

For further information, please call: (512) 389-4775



*Foster Bishop  
10th Grade*



# 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 2. TEXAS ETHICS COMMISSION

#### CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

##### 1 TAC §22.5

The Texas Ethics Commission (the commission) adopts new rule §22.5, relating to contributions to direct campaign expenditure only committees. The new rule is adopted without changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9165) and will not be republished.

The new rule requires that before accepting a political contribution from a corporation or labor organization, a political committee that intends to act exclusively as a "direct campaign expenditure only committee" must file with the commission an affidavit stating that the committee intends to act exclusively as a direct campaign expenditure only committee, and the committee shall not use its political contributions to make political contributions to any candidate for elective office, officeholder, or political committee that makes a political contribution to a candidate or officeholder. The new rule also provides that a corporation or labor organization may not make a political contribution to a "direct campaign expenditure only committee" before the committee has filed with the commission an affidavit described under subsection (a) of the rule.

The new rule provides clarity of reported contributions to direct campaign expenditure only committees.

No comments were received regarding the adoption of the new rule.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2014.

TRD-201400776

Natalia Luna Ashley

Interim Director/Special Counsel

Texas Ethics Commission

Effective date: March 12, 2014

Proposal publication date: December 20, 2013

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

## TITLE 7. BANKING AND SECURITIES

### PART 6. CREDIT UNION DEPARTMENT

#### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

##### SUBCHAPTER D. POWERS OF CREDIT UNIONS

##### 7 TAC §91.401

The Credit Union Commission (the Commission) adopts an amendment to §91.401, concerning Purchase, Lease, or Sale of Fixed Assets, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7561).

The amendment is adopted to modernize language related to fixed asset investment limitations and clarify the documents required to accompany an application requesting a waiver or modification of the fixed asset investment limits.

The amendment is adopted as a result of the Credit Union Department's general rule review.

The Commission received no comments on the proposed amendment.

The amendment is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code; and under Texas Finance Code §124.351 which sets out permitted investments for credit unions.

The specific section affected by the adopted amendment is Texas Finance Code, §123.110.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201400817

Harold E. Feeney  
Commissioner  
Credit Union Department  
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Proposal publication date: November 1, 2013  
For further information, please call: (512) 837-9236



## 7 TAC §91.405

The Credit Union Commission (the Commission) adopts an amendment to §91.405, concerning Records Retention and Preservation, without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7562).

The amendment is adopted to eliminate an outdated example of effective certificates or licenses to operate under programs of various government agencies, specifically, a certificate to act as issuing agent for the sale of United States savings bonds.

The amendment is adopted as a result of the Credit Union Department's general rule review.

The Commission received no comments on the proposed amendment.

The amendment is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code; and under Texas Finance Code §124.351 which sets out permitted investments for credit unions.

The specific section affected by the adopted amendment is Texas Finance Code, §123.110.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Harold E. Feeney  
Commissioner  
Credit Union Department  
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For further information, please call: (512) 837-9236



## SUBCHAPTER K. RESIDENTIAL MORTGAGE LOAN ORIGINATORS EMPLOYED BY A CUSO

### 7 TAC §§91.2000 - 91.2007

The Credit Union Commission adopts the repeal of Chapter 91, Subchapter K, §§91.2000 - 91.2007, concerning Residential Mortgage Loan Originators Employed by a CUSO, without changes to the proposal as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7564).

The repeal is adopted as a result of provisions enacted in the 83rd Session of the Legislature (2013) that were contained within Senate Bill 1004. The provisions repealed Texas Finance Code,

§15.024, and included amendments to Texas Finance Code, §§156.101, 158.104, and 180.002, relating to rulemaking, examination, investigation, inspection and enforcement for residential mortgage loan originator employees of credit union subsidiary organizations. The amendments transferred responsibility for the regulation of these persons from the Credit Union Commissioner and the Credit Union Commission to the Department of Savings and Mortgage Lending and the Finance Commission. Therefore, the need for Chapter 91, Subchapter K has been eliminated.

The Commission received no comments on the proposed repeal.

The repeal is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle D of the Texas Finance Code; and Texas Finance Code §15.024 (repealed), which had authorized the Commission to adopt rules regarding residential mortgage loan originator employees of credit union subsidiary organizations.

The specific sections affected by the adopted repeal are Texas Finance Code, §§15.024, 156.101, 158.104, and 180.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Harold E. Feeney  
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Credit Union Department  
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## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 85. VEHICLE STORAGE FACILITIES

### 16 TAC §§85.703, 85.704, 85.710, 85.726

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to §85.704 and §85.710; and new §85.726, regarding the Vehicle Storage Facilities program, without changes to the proposed text as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6112) and will not be republished.

Section 85.703 is adopted with changes to the proposed text as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6112) and will be republished. The adoption takes effect March 15, 2014.

These rules implement House Bill 338 (HB 338), 83rd Legislature, Regular Session (2013) and recommendations from the Towing, Storage, and Booting Advisory Board to clarify certain provisions.

The amendments to §85.703 clarify, without imposing additional expense, the type of mail that may be used to provide notices from the licensees to vehicle owners. This amendment also requires licensees to provide the vehicle owner or representative with the Texas Department of Licensing and Regulation's (Department's) internet address.

The amendment to §85.704 corrects the cross-reference to existing statutory requirements related to the content of signage that a storage facility must display.

The amendments to §85.710 implement HB 338 which provides that towing hearings may be held in any justice court in the county in which a vehicle is towed. The amendment also requires the storage facility to provide the address for the justice courts or the link to Office of Court Administration of the Texas Judicial System.

New §85.726 provides a standard of conduct that licensees must perform regulated activities with honesty, trustworthiness, and integrity.

The Department drafted and distributed the rule proposal to persons internal and external to the agency. The proposed rules were published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6112). The deadline for public comments was October 21, 2013. The Department received comments from four interested parties during the 30-day public comment period. On January 22, 2014, the Towing, Storage, and Booting Advisory Board met to review public comments and recommend changes to the proposed rules in response to comments received.

Comment: Several commenters oppose the requirement that storage facilities include an internet address in notices published under §85.703(h)(2)(A).

Department Response: The Commission notes that the proposed rule never intended to require licensees to provide an internet address. The stated purpose of the rule was to require licensees to publish the Department's internet address. Therefore, the rule has been modified to reflect its intended purpose.

Comment: Another commenter opposes §85.710(a)(1)(A) regarding the requirement to provide contact information of the justice courts in the county from which the vehicle is towed.

Department Response: The notice requirement is mandated by statute and therefore has not been changed in response to this comment.

Comment: One commenter suggests that if any of the proposed rules result in changes to signs or tow tickets that the rules establish a grace period for compliance.

Department Response: The Commission notes that the proposed rules do not impact signs or tow tickets. Therefore, a grace period for compliance is not necessary.

Comment: One commenter notes several non-substantive formatting errors in the published rules.

Department Response: To the extent necessary, the concerns have been addressed.

The new and amended rules are adopted under Texas Occupations Code, Chapters 51 and 2303, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the adoption.

*§85.703. Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder.*

(a) Applicability. If a vehicle is removed by the vehicle owner within 24 hours after the VSF receives the vehicle, notification as described in subsections (b) - (i) does not apply.

(b) Notification to owners of registered vehicles. Registered owners of towed vehicles shall be notified in the following manner.

(1) Vehicles registered in Texas. After accepting for storage a vehicle registered in Texas, the VSF shall notify the vehicle's current registered owner and primary lien holder by certified mail, return receipt requested, registered, or electronic certified mail within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) Vehicles not registered in Texas. After accepting for storage a vehicle not registered in Texas, the VSF shall notify the vehicle's current registered owner and all recorded lien holders within 14 days, but in no event sooner than within 24 hours of receipt of the vehicle.

(c) It is a defense to an action initiated by the department for violation of this section that the facility has attempted unsuccessfully and in writing or electronically to obtain information from the governmental entity with which the vehicle is registered by requesting the names and addresses of registered owners and lien holders based on the license plate number and vehicle identification number.

(d) Date of notification. Notification will be considered to have occurred when the United States Postal Service places its postmark and to be timely filed if:

(1) the postmark indicates that the notice was mailed within the period described by subsection (a) or (b); or

(2) the notice was published as provided for by subsection (e).

(e) Notice by publication. Notice to the registered owner and the primary lienholder of a vehicle towed to a VSF may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(1) the vehicle is registered in another state;

(2) the operator of the storage facility submits to the governmental entity with which the vehicle is registered a written request for information relating to the identity of the registered owner and any lienholder of record;

(3) the identity of the registered owner cannot be determined;

(4) the registration does not contain an address for the registered owner; or

(5) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(f) Notice by publication is not required if each notice sent in accordance with subsection (b) is returned because:

(1) the notice was unclaimed or refused; or

(2) the person to whom the notice was sent moved without leaving a forwarding address.

(g) Only one notice is required to be published for an abandoned nuisance vehicle.

(h) Form of notifications. All mailed notifications must be correctly addressed; mailed with sufficient postage; and sent by certified mail, return receipt requested, registered, or electronic certified mail.

(1) All mailed notifications shall state:

(A) the full licensed name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(B) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released";

(C) the first date for which a storage fee is assessed;

(D) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred if the operator will be transferring a vehicle to a second lot because the vehicle has not been claimed within a certain time;

(E) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(F) the VSF license number preceded by the words "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No.";

(G) a notice of the towed vehicle owner's right under Texas Occupations Code, Chapter 2308, to challenge the legality of the tow involved; and

(H) the name, mailing address, and toll-free telephone number of the department for purposes of directing questions or complaints.

(2) All published notifications shall state:

(A) the full name, street address, telephone number, and VSF license number of the VSF, and the Department's internet address;

(B) a description of the vehicle; and

(C) the total amount of charges assessed against the vehicle.

(3) Notices published in a newspaper may contain information for more than one towed vehicle.

(i) If authorized, a notification fee may not be charged unless the notification is actually sent or performed before the vehicle is released.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201400807

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



## CHAPTER 86. VEHICLE TOWING AND BOOTING

### 16 TAC §§86.207, 86.215, 86.218, 86.702

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to §§86.207, 86.215, and 86.702, regarding the Vehicle Towing and Booting program, without changes to the proposed text as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6114) and will not be republished.

Section 86.218 is adopted with changes to the proposed text as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6114) and will be republished. The adoption takes effect March 15, 2014.

These rules implement recommendations from the Towing, Storage, and Booting Advisory Board to clarify certain provisions and attempt to lower agency operating costs to administer the towing, storage, and booting program.

The amendment to §86.207 clarifies that a towing operator must have the appropriate towing operator's license and not just a towing operator's license before operating a tow truck in this state.

The amendment to §86.215 clarifies that a person may not operate a towing company or operate as a towing company without a towing company license issued by the Texas Department of Licensing and Regulation (Department).

The amendments to §86.218 add new subsections (b) and (c) which require a towing company licensed under this chapter to provide an email address on the initial application and applications for renewal. The email address applies to towing operators, if an email address is available.

The amendment to §86.702 requires that a licensee or permit holder notify the Department of changes to an email address no later than the effective date of the change.

The Department drafted and distributed the rule proposal to persons internal and external to the agency. The proposed rules were published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6114). The deadline for public comments was October 21, 2013. The Department received comments from four interested parties during the 30-day public comment period. On January 22, 2014, the Towing, Storage, and Booting Advisory Board met to review public comments and recommend changes to the proposed rules in response to comments received.

Comment: One commenter supports the proposed amendments to §86.207 and §86.215.

Comment: Three commenters oppose the email requirements in §86.218 and §86.702.

Department Response: After consideration of the potential cost savings that may result by the Department sending certain notices by email rather than through the postal service, the Advisory Board recommended changing the requirement in §86.218 to require email addresses, if available.

Comment: One commenter suggests that if any of the proposed rules result in changes to signs or tow tickets that the rules establish a grace period for compliance.

Department Response: The Commission notes that the proposed rules do not impact signs or tow tickets. Therefore, a grace period for compliance is not necessary.



The amended rules are adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adoption.

*§86.218. Department Notifications to Licensee or Permit Holder.*

(a) Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee or permit holder.

(b) A person licensed as a tow company must provide to the department, if available, a valid email address and shall maintain the email address on file with the department during the term of the license.

(c) A person licensed as a towing operator must provide the department, if available, a valid email address and shall maintain the email address on file with the department during the term of the license.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 21, 2014.

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William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
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For further information, please call: (512) 463-8179



## CHAPTER 89. VEHICLE BOOTING AND IMMOBILIZATION

### 16 TAC §§89.70, 89.78, 89.79, 89.103

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to §§89.70, 89.78, 89.79, and 89.103, regarding the Vehicle Booting and Immobilization program, without changes to the proposed text as published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6114) and will not be republished. The adoption takes effect March 15, 2014.

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

The amendments to §89.70 and §89.79 eliminate the requirement that a vehicle may not be booted and towed within 24 hours of installation of the immobilization device. The time period is reduced to 16 hours between the boot and the tow.

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

The amendment to §89.79 allows the immediate removal of a vehicle when the vehicle owner or operator poses an immediate threat to the booting operator, or causes, or attempts to cause, or threatens to cause damage to the immobilization device.

The amendment to §89.103 eliminates the requirement that booting operators wear uniforms, protective clothing, and fluorescent vests while engaged in booting operations.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the rule proposal to persons internal and external to the agency. The proposed rules were published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6114). The deadline for public comments was October 21, 2013. The Department received comments from one interested party during the 30-day public comment period. The commenter was in support of the proposed rules. On January 22, 2014, the Towing, Storage, and Booting Advisory Board met to discuss the rules as published and the public comment received.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2308, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
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For further information, please call: (512) 463-8179



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER BB. COMMISSIONER'S

##### RULES ON REPORTING REQUIREMENTS

#### 19 TAC §61.1021, §61.1022

The Texas Education Agency (TEA) adopts amendments to §61.1021 and §61.1022, concerning reporting requirements. The amendments are adopted without changes to the proposed text as published in the November 22, 2013, issue of the *Texas Register* (38 TexReg 8337) and will not be republished. The sections address school report cards and the Academic Excellence Indicator System (AEIS) report. The adopted amendments update provisions related to school report cards and the AEIS report.

In 1994, 19 TAC §61.1021, School Report Cards, and 19 TAC §61.1022, Academic Excellence Indicator System Report, were adopted to increase awareness and knowledge of the resources and performance of public schools through the distribution of the school report card and to enhance parental involvement in campus improvement activities.

The adopted amendment to 19 TAC §61.1021 updates a Texas Education Code (TEC) reference from §39.052 to §39.305. Additionally, language has been added to specifically allow for the use of electronic mail to meet the requirements related to distributing the school report card.

The adopted amendment to 19 TAC §61.1022 changes all references to the AEIS report to the "Texas Academic Performance Report" since House Bill 3, 81st Texas Legislature, Regular Session, 2009, removed the term AEIS from the TEC. The adopted amendment also updates a reference to the TEC from §39.053 to §39.306. In addition, language has been added to specify that the required hearing for public discussion could take place during a regularly scheduled or special meeting of the local board of trustees and that the report must be posted on the school district website.

The adopted amendments have no new procedural or reporting implications beyond those already in place. School districts must publicize hearings for public discussion of the Texas Academic Performance Report and requirements related to the publication and distribution of that report and the school report card.

The adopted amendments have 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 on November 22, 2013, and ended December 23, 2013. No public comments were received.

The amendments are adopted under the Texas Education Code (TEC), §39.305, which authorizes the commissioner to adopt rules requiring dissemination of campus report cards annually to the parent or person standing in parental relation to each student at the campus; and the TEC, §39.306, which authorizes the commissioner to adopt rules concerning dissemination of the annual school district and campus performance report.

The amendments implement the TEC, §39.305 and §39.306.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201400812

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: November 22, 2013

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



## CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

### 19 TAC §62.1071

The Texas Education Agency (TEA) adopts an amendment to §62.1071, concerning the equalized wealth level. The amendment is adopted without changes to the proposed text as published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9430) and will not be republished. The section establishes provisions relating to wealth equalization requirements. The amendment adopts as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year*. The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

Legal counsel with the TEA has advised that the procedures contained in each yearly manual for districts subject to wealth equalization be adopted as part of the TAC. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The adopted amendment to 19 TAC §62.1071, *Manual for Districts Subject to Wealth Equalization*, adopts in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year* as Figure: 19 TAC §62.1071(a).

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

Significant changes to the *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year* from the *Manual for Districts Subject to Wealth Equalization 2012-2013 School Year* include the following.

#### *Appendix C: Sample Contracts*

In accordance with changes to the TEC, §41.0041, made by Senate Bill 1658, 83rd Texas Legislature, Regular Session, 2013, the Option 3 agreement for a district opting to net its recapture against certain state aid has been revised to refer to any aid received under the TEC, Chapter 42, instead of only Additional State Aid for Tax Reduction.

#### *Appendix D: Sample Ballot Proposition Language*

Information on preclearance of an election under Section 5 of the Voting Rights Act has been updated to reflect the recent US Supreme Court decision in *Shelby County v. Holder*.

The adopted rule action places the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each yearly manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System.

The adopted rule action 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 December 27, 2013, and ended January 27, 2014. No public comments were received.

The amendment is adopted under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

The amendment implements the TEC, §41.006.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201400813

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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## CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

### SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

#### **19 TAC §§66.28, 66.33, 66.36, 66.45, 66.48, 66.51, 66.63, 66.66, 66.79, 66.81**

The State Board of Education (SBOE) adopts amendments to §§66.28, 66.33, 66.36, 66.45, 66.48, 66.51, 66.63, 66.66, and 66.79 and new §66.81, concerning instructional materials. The amendments to §§66.28, 66.48, 66.51, and 66.63 and new §66.81 are adopted without changes to the proposed text as published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9431) and will not be republished. The amendments to §§66.33, 66.36, 66.45, 66.66, and 66.79 are adopted with changes to the proposed text as published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9431). The sections establish provisions relating to the state adoption of instructional materials. The adopted amendments and new section update and clarify specific processes for the review and adoption of instructional materials. Specifically, the proposed revisions include the following rule actions.

Section 66.28, Adoption by Reference, was amended to include reference to the Request for Supplemental Science Materials and Proclamation 2014.

Section 66.33, State Review Panels: Appointment, was amended to clarify the preferred composition of the state review panels. The section was revised at adoption in subsection (a) to remove proposed language that would have allowed an SBOE member to veto the placement of a review panel member from his or her district. Subsection (a) was also revised at adoption to specify that the role of each appointee shall be designated by the commissioner. Subsection (c) was revised at adoption to specify that the SBOE will be notified of proposed appointments.

Section 66.36, State Review Panels: Duties and Conduct, was amended to clarify the decision-making process for the state review panels. The section was revised at adoption in subsection (a) to specify that all portions of instructional materials must be reviewed by at least two panel members; remove proposed language that would have required the designation of a recording secretary for panel deliberations; and add language to allow majority and minority reports for recommendations regarding the placement of instructional materials on the adopted list and the identification of factual errors. Subsection (b) was revised at adoption to add SBOE members as persons prohibited from providing state review panel members with meals, entertainment, gifts, or gratuities in any form. Subsection (d) was revised at adoption to update the description of parties with whom panel members may not discuss instructional materials being evaluated prior to the conclusion of the review to include members of the SBOE and any party having financial interest in the adoption.

Section 66.45, State Review Panels: No-Contact Periods, was amended to explain the type of communication that a state review panel member may have with people outside of the state review panel. The section was revised at adoption in subsection (a) to match revisions made in §66.66 relating to SBOE contact with state review panel members and to specify that panel members are not prohibited from seeking advice from educators, experts, parents, or students.

Section 66.48, Statement of Intent to Bid Instructional Materials, was amended to remove language that is duplicative or obsolete.

Section 66.51, Instructional Materials Ordered Through the State, was amended to clarify the requirements for publisher-supplied correlation forms.

Section 66.63, Report of the Commissioner of Education, was amended to explain both the purpose of a show-cause hearing and the eligibility requirements for a show-cause hearing.

Section 66.66, Consideration and Adoption of Instructional Materials by the State Board of Education, was amended to clarify the requirements for adoption and the process for withdrawing materials from consideration. The section was revised at adoption in subsection (b)(3) to make clear that grammatical or punctuation errors will be treated as factual errors if they are determined to not impede student learning.

Section 66.79, Adding Content During the Review and Adoption Process, was amended to explain both the purpose for providing new content during the review of instructional materials and the eligibility requirements for providing new content. The section was revised at adoption in subsection (a) to specify that a publisher may also edit content of instructional materials during the review and adoption process. New subsection (a)(3) was added to allow publishers to add or edit content to address concerns raised during public testimony at an SBOE public hearing and requested by a majority vote of the SBOE.

Adopted new §66.81, Ancillary Materials, was added to define the term *ancillary* and provide for penalties for publishers and/or manufacturers of instructional materials that fail to provide ancillaries to districts and charter schools equitably.

The adopted amendments and new section have no new procedural and reporting implications. The adopted amendments and new section have no new locally maintained paperwork requirements.

The Texas Education Agency 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 SBOE took action to approve the proposed revisions to 19 TAC Chapter 66, Subchapter B, for second reading and final adoption during its January 31, 2014, meeting. In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for final adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2014-2015 school year. The earlier effective date will enable the board to implement updates to the review process beginning with Proclamation 2015.

Following is a summary of the public comments and corresponding responses regarding the proposed revisions to 19 TAC Chapter 66, Subchapter B.

#### §66.33. *State Review Panels: Appointment*

**Comment:** Fifteen individuals commented that the State Board of Education members should not be allowed to veto the placement of a review panel member because it could limit the participation of qualified candidates.

**Response:** The SBOE agreed and took action to revise §66.33(a) to remove proposed language that would have allowed an SBOE member to veto the placement of a review panel member from his or her district.

#### §66.36. *State Review Panels: Duties and Conducts*

**Comment:** Thirteen individuals commented that designating one review panel member as a recording secretary would reduce or eliminate that member's contributions as a reviewer and adversely affect the ability of the panel to complete the review.

**Response:** The SBOE agreed and took action to revise §66.36(a)(1) to remove proposed subparagraph (C) that would have required a review panel member to serve as recording secretary.

#### §66.45. *State Review Panels: No Contact Periods*

**Comment:** An individual commented that Texas Education Agency (TEA) staff will need to be able to respond to content-specific questions.

**Response:** The SBOE agreed and took action to adopt the proposed language in §66.45(c), that allows state review panel members to request information or clarification regarding content of instructional materials under consideration from TEA staff members with knowledge of the Texas essential knowledge and skills during the virtual and face-to-face reviews.

The amendments and new section are adopted under the Texas Education Code, §7.102(c)(23), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31; and §31.003, which authorizes the SBOE to adopt rules for the adoption,

requisition, distribution, care, use, and disposal of instructional materials.

The amendments and new section implement the Texas Education Code, §7.102(c)(23) and §31.003.

#### §66.33. *State Review Panels: Appointment*

(a) The commissioner of education shall determine the number of review panels needed to review instructional materials under consideration for adoption, determine the number of persons to serve on each panel, and determine the process for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with priority given to qualified individuals who are nominated by State Board of Education (SBOE) members and with the advice and consent of the SBOE member whose district is to be represented. The commissioner of education shall make appointments to state review panels that achieve diversity to the extent possible; ensure that each team has members with sufficient content expertise and experience; and ensure participation by academic experts in each subject area for which instructional materials are being considered, giving priority to content-relevant educators and professors. The appointments shall include educators, parents, business and industry representatives, and employers. The role of each appointee shall be designated by the commissioner of education and disclosed to all appointees on each panel.

(b) The commissioner of education shall solicit nominations for possible appointees to state review panels from the SBOE, school districts, open-enrollment charter schools, and educational organizations in the state. Nominations may be accepted from any Texas resident. Nominations shall not be made by or accepted from any publishers; hardware or software providers; authors; depositories; agents for publishers, hardware or software providers, authors, or depositories; or any person who holds any official position with a publisher, hardware or software providers, author, depository, or agent.

(c) The SBOE shall be notified of proposed appointments made by the commissioner of education to state review panels.

(d) Members of a state review panel may be removed at the discretion of the commissioner of education.

#### §66.36. *State Review Panels: Duties and Conduct*

(a) The duties of each member of a state review panel are to:

(1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered in the student version of the instructional materials as well as in the teacher version of the instructional materials. All portions of instructional materials must be reviewed by at least two panel members for the purpose of this review. Nothing in this rule shall be construed to contravene the Texas Education Code (TEC), §28.004(e)(5), which makes coverage of contraception and condom use optional in both the student and teacher editions of health instructional materials. Panel members will use State Board of Education (SBOE)-approved procedures for evaluating coverage of the essential knowledge and skills. Coverage must be identified at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. The approved procedures include the following.

(A) State review panel members must participate in training to ensure clear and consistent guidelines for determining full Texas essential knowledge and skills (TEKS) coverage within the instructional materials.

(B) State review panel members must participate in a team during the review and reach a consensus, or a simple majority if

the panel members are unable to reach consensus, to determine whether the TEKS have been covered sufficiently in the instructional materials.

(C) Instructional materials shall be evaluated for TEKS coverage at each grade level.

(D) A student expectation may be considered sufficiently covered only if the instructional materials provide one of the following:

(i) an opportunity for the teacher to teach each component of the knowledge or skill in the teacher material;

(ii) an opportunity for the student to learn each component of the knowledge or skill in the student material or the teacher material; or

(iii) an opportunity for the student to demonstrate each component of the knowledge or practice each component of the skill in the student material or the teacher material.

(E) Student expectations are not considered covered if only included in side bars, captions, or questions at the end of a section or chapter.

(F) Each student expectation must be clearly evident in the instructional materials to ensure sufficient coverage.

(G) Student expectations that contain the word "including" reference content that must be covered in instructional materials, while those containing the phrase "such as" are intended as possible illustrative examples and are not required to be covered in instructional materials.

(2) make recommendations, through the submission of a consensus report, or, if necessary, majority and minority reports that reflect the opinions of all panel members listed by team role, to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected;

(3) submit to the commissioner of education a list of any factual errors in instructional materials discovered during the review conducted by the state review panel through the submission of a consensus report, or, if necessary, majority and minority reports that reflect the opinions of all panel members listed by team role, to determine what factual errors have been discovered; and

(4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from SBOE members; publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.

(d) State review panel members shall be afforded the opportunity to collaborate with other panel members during the official virtual and face-to-face reviews to discuss coverage of TEKS, errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no con-

tact with other members of the panel regarding the instructional materials being reviewed, except during official virtual and face-to-face reviews. State review panel members shall not discuss instructional materials being evaluated with a member of the SBOE or with any party having a financial interest in the adoption of instructional materials prior to the conclusion of the review.

(e) State review panel members participating in the face-to-face review shall affix their signatures to all recommendations to the commissioner of education. State review panel members participating in the virtual review shall submit their recommendations electronically through email, which will serve as their electronic signatures.

(f) Members of each state review panel may be required to be present at the State Board of Education meeting at which instructional materials are adopted.

*§66.45. State Review Panels: No-Contact Periods.*

(a) State review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a state review panel and end after recommendations have been made to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected. During this period, state review panel members shall not have direct or indirect communication with any person having an interest in the adoption process regarding content of instructional materials under evaluation by the panel. This restriction is not intended to prohibit members of the state review panels from seeking advice regarding materials under consideration from educators, experts, parents, or students.

(b) State review panel members shall report immediately to the commissioner of education any communication or attempted communication by any person regarding instructional materials being evaluated by the panel.

(c) State review panel members may request information or clarification regarding content of instructional materials under consideration from Texas Education Agency (TEA) staff members with knowledge of the Texas essential knowledge and skills during the virtual or face-to-face reviews. Answers to relevant questions asked by individual members shall be shared with all members of the appropriate state review panel.

*§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.*

(a) Publishers shall file three copies of the official bid form with the commissioner of education according to the schedule of adoption procedures.

(b) The State Board of Education (SBOE) shall adopt a list of adopted instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:

(1) meet at least 50% of the Texas essential knowledge and skills (TEKS) for the subject and grade level in the student version of the instructional materials as well as in the teacher version of the instructional materials. In determining the percentage of elements of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS of the subject;

(2) meet the established physical specifications adopted by the SBOE;

(3) are free from factual errors, including significant grammatical or punctuation errors that have been determined to impede student learning, or the publisher has agreed to correct any identified fac-

tual errors, or grammatical or punctuation errors that have been determined to impede student learning, prior to execution of a contract pursuant to §66.72 of this title (relating to Preparing and Completing Contracts); and

(4) receive majority vote of the SBOE. However, no instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(c) Instructional materials submitted for placement on the adopted list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

(d) The SBOE shall either adopt or reject each submitted instructional material in accordance with the TEC, §31.024.

(e) A publisher may withdraw from the adoption process at any time prior to final adoption for any reason by providing notification in writing to the commissioner of education. Notification of withdrawal is final and irrevocable.

*§66.79. Adding Content During the Review and Adoption Process.*

(a) A publisher may add or edit content to instructional materials during the review and adoption process only to allow the materials to:

(1) meet the Texas essential knowledge and skills (TEKS) coverage percentage the publisher had specified on the complete program description form submitted for that instructional product;

(2) meet 100% of the English language proficiency standards (ELPS) designated for the subject and grade for which the instructional product is intended; and

(3) address concerns raised during public testimony at a public hearing of the State Board of Education (SBOE) and requested by a majority vote of the SBOE, as allowed by law.

(b) To be eligible to have content added as described in subsection (a) of this section, an instructional product must, upon its initial review, be identified as meeting:

(1) at least 75% of the TEKS coverage percentage indicated by the publisher on the complete program description form submitted for that instructional product; and

(2) at least 75% of the ELPS designated for the subject and grade for which the instructional product is intended.

(c) A publisher shall have one opportunity to provide a written request for the Texas Education Agency (TEA) to further review an instructional product that is not eligible to have new content added according to subsection (b) of this section.

(d) New content submitted for review shall be submitted in a format approved by the commissioner of education and shall be made available for public review at the TEA and at each education service center (ESC) prior to the adoption of instructional materials. New content submitted under this subsection must be submitted by the deadline determined by the TEA.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 95. COMMISSIONER'S RULES CONCERNING EDUCATION RESEARCH CENTERS

### 19 TAC §95.1001

The Texas Education Agency (TEA) adopts the repeal of §95.1001, concerning education research centers (ERCs). The repeal is adopted without changes to the proposed text as published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7597) and will not be republished. The section establishes requirements for the operation of ERCs. The adopted repeal is necessary due to amendment to the rule's authorizing statute, Texas Education Code (TEC), §1.005, by House Bill (HB) 2103, 83rd Texas Legislature, Regular Session, 2013.

The TEC, §1.005, as added by HB 1, 79th Texas Legislature, Third Called Session, 2006, authorized the commissioner of education to adopt rules relating to the operation of ERCs. The commissioner exercised rulemaking authority to adopt 19 TAC §95.1001, Operation of Education Research Centers, effective December 30, 2007.

Section 95.1001 establishes definitions, explains the process by which an ERC can be established, outlines the responsibilities of the agencies and sponsoring institutes of higher education, and provides details regarding the development and procedures of the Joint Advisory Board. The rule further describes the operating procedures for an ERC with respect to management of the ERC, access to and use of confidential information, the availability and review of research produced by an ERC, compliance requirements with the Texas Public Information Act, compliance requirements with audit requests, and the process by which data not included in the ERC data warehouse would be added. The rule also includes provisions for sanctions, termination, and data security.

HB 2103, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, §1.005, by removing provisions for commissioner of education rulemaking authority and direct oversight of the operation of ERCs by the TEA. The adopted repeal implements the statutory changes enacted by HB 2103.

The adopted repeal has no procedural or reporting implications. The adopted repeal 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 November 1, 2013, and ended December 2, 2013. Following is a summary of public comments received and the corresponding agency response regarding the proposed repeal of 19 TAC Chapter 95, Commissioner's Rules Concerning Education Research Centers, §95.1001, Operation of Education Research Centers.

Comment: The assistant vice chancellor of The University of Texas System and the associate vice president for governmental relations at The University of Texas at Austin expressed concern that there might be costs to the agency above and beyond normal operations associated with providing data to the education research centers.

Agency Response: The agency provides the following clarification. The cost estimation provided as part of the proposed repeal of 19 TAC §95.1001 represents the potential estimated cost to the TEA for staff time associated with processing the data that TEA provides for inclusion in the P-20/Workforce Data Repository. Per the TEC, §1.005(j), TEA, as a cooperating agency, is required to and has entered into a data-sharing agreement with the Texas Higher Education Coordinating Board (THECB) to make TEA data available to facilitate the Advisory Board-approved studies or evaluations at ERCs and to update the provided data sources as additional data are collected. Additionally, per this agreement and the TEC, §1.005(g-1)(1), TEA is required to process and match supplemental data to TEA data to be entered into the P-20/Workforce Data Repository for an Advisory Board-approved project. While TEA does already routinely collect data it houses at TEA, the data cannot be used in its current form and must be processed before it can be shared with THECB for inclusion in the P-20/Workforce Data Repository. Processing existing TEA data for this purpose, as well as any additional supplemental data, is over and above normal operation costs. Depending on the volume and the nature of requests, these data processing procedures have the potential to consume considerable staff time.

According to 19 TAC §1.18(b)(3), ERC-sponsoring institutions are responsible for documented staff time and equipment at TEA necessary to prepare and maintain data for the ERCs, and costs will include actual documented expenses for up to two full-time equivalent employees at each agency. Because HB 2103 removed TEA's rulemaking authority as well as direct oversight of operations of the ERCs, it was agreed upon by TEA and THECB through a memorandum of understanding that THECB would be responsible for ensuring reimbursement to TEA for the costs associated with fulfilling ERC data requirements. It was noted in the proposed repeal of 19 TAC §95.1001 that there were potential fiscal implications to TEA resulting from the repeal if TEA's costs associated with fulfilling ERC data requirements were not recovered. These costs would then become the responsibility of TEA. The amount provided as the fiscal implication was only an estimate but represents the potential cost per fiscal year. The actual costs associated with fulfilling ERC data requests per fiscal year are unknown at this time, but staff time and effort will be tracked, documented, and provided to the ERCs through THECB for reimbursement.

The repeal is adopted under the TEC, §1.005, which required the commissioner of education and the Texas Higher Education Coordinating Board to adopt rules for the implementation of education research centers, including the use of student data at an education research center. HB 2103, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, §1.005, by removing the provisions for commissioner of education rulemaking authority and direct oversight of the operation of education research centers by the TEA.

The repeal implements the TEC, §1.005, as amended by HB 2103, 83rd Texas Legislature, Regular Session, 2013.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 265. GENERAL SANITATION SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

##### 25 TAC §§265.11 - 265.20, 265.23, 265.24, 265.29

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§265.11 - 265.20, 265.23, 265.24, and 265.29 concerning the regulation of Texas youth camps. Sections 265.15, 265.17, and 265.24 are adopted with changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5683). Sections 265.11 - 265.14, 265.16, 265.18 - 265.20, 265.23, and 265.29 are adopted without changes and, therefore, the sections will not be republished.

##### BACKGROUND AND PURPOSE

The amendments to the Texas Youth Camps Safety and Health rules are in response to recommendations made by the Youth Camp Advisory Committee, as well as by state program personnel based on statutory authority found in the Texas Youth Camp Safety and Health Act, Health and Safety Code, Chapter 141. The amendments correct information in the rules, add clarification, and expand requirements to better protect children attending youth camps.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.11 - 265.29 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on this subject are needed to regulate the safety of youth camp facilities and to protect the health and well-being of youth attending these facilities.

##### SECTION-BY-SECTION SUMMARY

Minor editorial changes were made throughout the rules to correct formatting and to enhance clarity.

The amendment to §265.11(18) adds a new definition for "supervised," and the remaining definitions were renumbered.

Section 265.12 includes amendments that strengthen requirements to justify hiring decisions for people with certain criminal histories, expand the required content of sexual abuse and child molestation awareness training, remove the documentation requirement from this section, and add a list of conditions for appropriate supervision of persons prohibited from having unsupervised contact with campers.

Amendments to §265.13 delete references to "privies," and also corrects the rule numbering references to subsections and figures in this section. There were no changes made to the content of the figures in new (q)(1) and (4)(C).

An amendment to §265.14(g) adds the word "ratio" to describe minimum standards of supervision of campers.

Amendments to §265.15(d)(1) correct the telephone number for the Office of the Inspector General, and subsection (k) consolidates existing requirements for the content and placement of written camp emergency plans. Subsection (f), including the figure, and subsection (m) have revised requirements for first aid kit contents.

Amendments to §265.15(f) added the sentence "Supplies should be in single use packaging" and modifications were made to the required list of first aid supplies.

In §265.16(e), the terms "bathers" was replaced with the terms "campers."

Concerning §265.17(f)(2)(C), it was recommended that the words "head gear" be replaced with "helmets," so that §265.17(f)(2)(C) would read "require all riders (campers and instructional staff) to wear appropriate protective helmets." Other amendments to §265.17(f) reorganize the subsection to clarify the requirements for a horseback riding program.

Section 265.18(c) stipulating disaster and evacuation procedures is deleted because the requirement was consolidated in §265.15(k).

Amendments to §265.19(b) correct the name in a rule cross-reference, and subsection (d) adds a requirement for the use of safety belts in vehicles transporting campers.

The word "bathing" is deleted from §265.20(c).

Amendments to §265.23(a)(3)(A) and (B) correct references to other sections of this title and subsection (c) standardizes the required availability of camp records.

An amendment to §265.24(b) provides the department discretion to send renewal notices to licensees. The phrase "by first class mail" was deleted, which will enable the department to send renewal notices in the most efficient way possible, depending on the information given to the department.

An amendment to §265.29(c) adds paragraphs (6) - (8) to comply with the requirements of Government Code, Chapter 2110, State Agency Advisory Committees. These changes concern the operation of the Youth Camp Advisory Committee and do not affect youth camps.

#### COMMENTS

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. The commenters include the following: The Youth Camp Advisory Committee and several individuals. The commenters were not against the rules in

their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were in favor of the rules.

Comment: Concerning §265.12(g) and (h) and §265.23(c), it was recommended to delete all references to "deferred adjudication(s)" in the rules.

Response: The commission agrees that limiting the evaluation of criminal histories to criminal convictions has merit and will consider making these changes in a future rulemaking. No change was made at this time in response to this comment.

Comment: One commenter suggested adding a recommendation that first aid supplies should be in single use packaging.

Response: The commission agrees that single use packaging will help to prevent unsanitary practices, and a sentence was added to §265.15(f) in order that large containers of first aid supplies would not be wasted or contaminated with each use.

Comment: One commenter recommended deleting the list of first aid supplies in §265.15(f).

Response: The commission acknowledges the comment; however the department decided at the September 25, 2013, meeting of the Youth Camp Advisory Committee to keep a list of first aid supplies, but with modifications to the required list of first aid supplies.

Comment: Concerning §265.17(f)(2)(C), one commenter recommended deleting the word "age." Another commenter recommended that the words "head gear" be replaced with "helmets," so that §265.17(f)(2)(C) would read "require all riders (campers and instructional staff) to wear appropriate protective helmets."

Response: The commission agrees and the word "age" was deleted from the sentence, and the word "helmets" replaced "head gear."

Comment: One commenter recommended replacing "may" with "shall" in §265.24(b).

Response: The commission acknowledges the comment; however the department decided against the word replacement in that sentence because there is no corresponding statutory requirement to send renewal notices. No change was made as a result of this comment.

Comment: Concerning §265.24(b), one commenter recommended that all renewal notice correspondence from the department be made by email only. Another commenter recommended deleting the phrase "by first class mail" in this same subsection.

Response: The commission acknowledges the comment about utilizing email, but the department decided against only email correspondence, since not all youth camps provide email addresses with their applications. The commission agreed to delete the phrase "by first class mail," which will enable the department to send renewal notices in the most efficient way possible, depending on the information given to the department.

#### 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.

#### STATUTORY AUTHORITY



The amendments are authorized by Health and Safety Code, §141.008, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules to implement the Youth Camp Safety and Health Act; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039, which requires each state agency to review and consider for re-adoption each rule adopted by the agency pursuant to the Government Code, Chapter 2001.

§265.15. *Medical and Nursing Care.*

(a) Record of an on-call physician required. Documentation shall be kept on file of a physician licensed to practice in Texas who is available to be on call at all times to advise health service personnel on all first aid and nursing services provided by the camp.

(b) Emergency transportation. Transportation shall be available at all times to transport any sick or injured camper in an emergency.

(c) Medical staffing requirements. A physician, registered nurse, licensed vocational nurse, or a person with an American Red Cross Emergency Response certificate, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer. For camps having documented evidence, such as a letter from the local emergency medical services (EMS), that the camp is located within a 20 minute community EMS response time, a person certified in American Red Cross Community First Aid and Safety, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer.

(d) Requirement to report incidents of abuse or neglect of a minor.

(1) Requirement to report incidents of abuse or neglect of a minor at a youth camp. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Family Code, Chapter 261, and the abuse or neglect occurred at the youth camp, then that person shall immediately make a report, in accordance with Family Code, §261.101(a) to the Health and Human Services Commission Office of Inspector General, as required by Family Code, §261.103. To make an online report go to [https://oig.hhsc.state.tx.us/Fraud\\_Report\\_Home.aspx](https://oig.hhsc.state.tx.us/Fraud_Report_Home.aspx). A report intake form, entitled HHSE Office of Internal Affairs: Texas Youth Camp Waste, Abuse and Fraud Referral Form may be faxed to the Office of Inspector General, Internal Affairs, 1-800-436-6184. A report shall be made to the Health and Human Services Commission Office of Inspector General and may be made to a local or state law enforcement agency or other agency listed in Family Code, §261.103.

(2) Requirement to report incidents of abuse or neglect of a minor other than at a youth camp. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Family Code, Chapter 261, and the abuse or neglect did not occur at the youth camp, then that person shall immediately make a report, in accordance with Family Code, §261.103.

(A) Except as provided by subparagraphs (B), (C) and (D) of this paragraph, a report shall be made to:

- (i) any local or state law enforcement agency;

(ii) the Department of Family and Protective Services Abuse Hotline, which may be contacted at (800) 252-5400 or through the secure web site <http://www.txabusehotline.org/>; or

(iii) the agency designated by the court to be responsible for the protection of children.

(B) A report may be made to the Texas Youth Commission instead of the entities listed under subparagraph (A) of this paragraph if the report is based on information provided by a child while under the supervision of the commission concerning the child's alleged abuse of another child.

(C) Notwithstanding subparagraph (A) of this paragraph, a report, other than a report under subparagraph (D) of this paragraph, shall be made to the Department of Family and Protective Services if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

(D) A report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility shall be made to the Texas Juvenile Probation Commission and a local law enforcement agency for investigation.

(e) Requirement to report camper death or communicable diseases. Camper death or confirmed cases of waterborne or foodborne diseases, such as cholera, dysentery, typhoid, salmonellosis, shigellosis, or infectious hepatitis, shall be reported to the department's Policy, Standards, and Quality Assurance Unit, within 24 hours of occurrence (or confirmation in the case of disease) by fax (512) 834-6707, or by email at the address found at [www.dshs.state.tx.us/youthcamp/default.shtm](http://www.dshs.state.tx.us/youthcamp/default.shtm).

(f) Designation of a first aid area. A first aid area, used exclusively to handle health and emergency cases, shall be designated and suitably equipped. Supplies should be in single use packaging. A first aid kit containing at the minimum the items listed in this subsection shall be available in the first aid area.

- (1) Sterile adhesive bandages in assorted sizes.
- (2) Sterile gauze pads in assorted sizes.
- (3) Hypoallergenic adhesive tape.
- (4) Triangular bandages.
- (5) Sterile roller bandages in assorted sizes.
- (6) Scissors.
- (7) Tweezers.
- (8) Moistened towelettes.
- (9) Antiseptic.
- (10) Thermometer.
- (11) Splints.
- (12) Petroleum jelly or other lubricant.
- (13) Cleansing agent/soap.
- (14) Exam quality gloves.
- (15) Eye wash solution.

(g) Isolation of a child with a communicable disease. A child ill with a confirmed or suspected case of a communicable disease shall be isolated to provide safety to other children and quiet to the patient. Any child that is isolated shall be supervised as determined by the Camp Health Officer. A child with a staphylococcal skin infection is

not required to be isolated, if the infection is kept completely covered by a bandage.

(h) Bound medical log required. A bound medical log, or other unalterable record keeping system, listing date, name of the patient, ailment, name of the Camp Health Officer, and the treatment prescribed shall be kept in the first aid area for the duration of the camp year for which the license is issued.

(i) Camper health records shall be kept on file. The first aid area shall keep a health record on each child with the child's name, allergies, immunizations, parent's name, address, and telephone number, and parent or guardian authorization for emergency medical care.

(j) Availability of an emergency telephone. The camp shall have a telephone readily available, preferably in the first aid area, for emergency use.

(k) Emergency plans required. A written plan of procedures to be implemented in case of a disaster, serious accident, epidemic, or fatality shall be formulated and posted in the camp's administrative on-site office or location and in each permanent and semi-permanent occupied building. The plan shall include procedures for emergency shelter and for evacuation of each occupied building and the facility. Campers shall be instructed as to their actions in the event of fire, disaster, or the need to evacuate. These procedures shall be reviewed by the staff with specific assignments made to each staff member and counselor. All camp staff and volunteers shall be made aware of this plan during the staff-training program or volunteer briefing. Documentation of this training shall be kept at the camp's administrative on-site office or location.

(l) Storing and dispensing prescription medication to campers. If a child is taking a prescription medication when he or she reports to camp, the medication shall be in the original container with the prescription label, and the medical staff shall place that medication, sharps, and related paraphernalia or devices in a lockable cabinet or other secure location that is not accessible to campers. The medication shall be administered by the Camp Health Officer or camp counselor, if authorized in writing by the Camp Health Officer. At no time shall the child be allowed to self-administer the medication without adult supervision. Medications needed for immediate use for life-threatening conditions (e.g., bee-sting medication, inhaler) and limited medications approved for use in first-aid kits may be carried by a camper or staff person. The camp shall have on file a written statement of medical necessity from the prescribing doctor or the written approval of the Camp Health Officer for any camper to carry medication and related paraphernalia or devices.

(m) Camp trip first aid kits. First aid kits containing at the minimum the items listed in subsection (f) of this section shall be taken on all out-of-camp trips.

#### §265.17. Program Safety and Equipment.

(a) Firearm or pellet gun programs at youth camps. A firearm or pellet gun program shall be conducted on a range that meets or exceeds the specifications outlined by the National Rifle Association or its equivalent. Safety procedures shall be enforced whenever the range is in use. The range shall be conspicuously marked and configured to prevent entry of campers onto the range while it is in use.

(b) Archery program at youth camps. An archery program shall be conducted on a range that meets or exceeds the specifications outlined by the National Field Archery Association or its equivalent. The archery range shall be conspicuously marked and configured to prevent entry of campers onto the range while it is in use.

(c) Program equipment condition and use. Equipment used in all programs shall be kept in good condition and present no hazard as a result of poor condition to the user at any time.

(d) Storage of firearms, pellet guns, and archery equipment when not in use. Firearms, pellet guns, ammunition, and archery equipment shall be kept in a secured area when not in use.

(e) Safety and maintenance of tools used by campers. All tools, including power tools, used by campers shall be maintained in good repair, shall have the necessary safety guard attached, and shall be used only under supervision.

(f) Horseback riding programs.

(1) Camps providing horseback riding programs shall require the head instructor or director of the program to follow the camp's riding program and safety procedures outlined in a written document. This document shall include the following:

(A) procedures to be followed in the event of an accident;

(B) procedures to determine each horse's suitability for safe use;

(C) proper care of tack and equipment;

(D) proper procedure for mounting;

(E) the number of riders per supervisor; and

(F) any other information that is specific to the camp's equestrian program or is helpful to the horseback riding director.

(2) Camps providing horseback riding programs shall:

(A) ensure that horses that are in use are sound and in good physical condition;

(B) ensure that the stable area is kept clean and free of all hazards; and

(C) require all riders (campers and instructional staff) to wear appropriate protective helmets.

(g) Adventure/challenge courses. Camps providing an adventure/challenge program utilizing belaying, spotting, or non-spotting elements must:

(1) designate a certified adventure/challenge program manager, who shall be in attendance whenever the adventure/challenge program is operating;

(2) ensure that the adventure/challenge program is operated and maintained in a safe manner;

(3) develop a set of site-specific policies and procedures, which establish criteria for all adventure/challenge operations, including equipment used and safety precautions;

(4) ensure that spotters and belayers are instructed in the proper procedures prior to assuming their duties, and that they are directly supervised until competency is demonstrated;

(5) establish a method to control access to the equipment and the activity area in order to prevent use by unauthorized or unsupervised campers;

(6) perform safety checks of all equipment and ropes prior to each use and maintain a record of all inspections and maintenance;

(7) provide a safety orientation for each camper prior to allowing the camper to engage in adventure/challenge activities;

(8) ensure that all campers engaged in adventure/challenge activities are wearing appropriate personal protective equipment; and

(9) provide documentation of an annual physical inspection of the adventure/challenge course and equipment by an insured third party inspector.

§265.24. *Application and Denial of a Renewal License.*

(a) Renewal of a youth camp license. A person holding a license under the Act shall renew the license annually before the license expires.

(b) Renewal notice. At least 60 days before a license expires, the department, as a service to the licensee, may send a renewal notice to the licensee or registrant to the last known address of the licensee. It remains the responsibility of the licensee to keep the department informed of the licensee's current address and to take action to renew the license whether or not they have received the notification from the department. The renewal notice shall state:

- (1) the type of license requiring renewal;
- (2) the time period allowed for renewal; and
- (3) the amount of the renewal fee.

(c) Renewal requirements. Renewal applications and fees shall be submitted to the department prior to the license's annual expiration date.

(1) Submitting an application. A renewal application is made by submitting:

- (A) a completed youth camp renewal application;
- (B) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;
- (C) any other requested documents and information;

and

(D) paying the renewal license fee as described in §265.28 of this title (relating to Fees).

(2) Obtaining an application. A blank renewal application may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600, or may be downloaded from the website at [www.dshs.state.tx.us/youthcamp/default.shtm](http://www.dshs.state.tx.us/youthcamp/default.shtm). Renewal applications may be submitted to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347.

(3) Qualifying for renewal of a youth camp license. The department shall issue a renewal license if the facility:

(A) meets the definition of a "Youth camp" as described in §265.11(25) of this title (relating to Definitions);

(B) meets the definition of "Youth camp, general characteristics of" in §265.11(26) of this title; and

(C) is in compliance with all provisions of the Act and the rules prior to operation as determined by:

- (i) submitting a complete renewal application as described in this subsection;
- (ii) passing a pre-licensing inspection conducted by the department, if required; and
- (iii) complying with all final orders resulting from any violations of these sections before the application for renewal is submitted.

(d) Processing renewal applications.

(1) Applications for license renewal under this chapter shall be received by the Environmental and Sanitation Licensing Group prior to the expiration date of the license or 45 days prior to camp operation, whichever is earlier.

(2) The department shall issue the renewal license or a written notice that the renewal application is complete or that the renewal application is deficient within the following periods of time from the date of receipt of the renewal application. The department shall identify deficiencies in the notice and provide a deadline by which the deficiencies shall be corrected in order for the department to renew the license or to schedule the pre-licensing inspection if required. Deficiencies may include the failure to provide required information, documents, or fees, or the failure to schedule or successfully pass the pre-licensing inspection if required. An application is not considered complete until all required documentation, information, and fees have been received. If a camp is subject to pre-licensing inspection, the time period for issuing a letter of acceptance of application for license renewal begins upon successfully passing inspection.

(A) Letter of acceptance of application for license renewal approving the application and authorizing operation - within 30 days. The original license may serve as the letter of acceptance.

(B) Letter of renewal application deficiency - within 30 days after receipt of a deficient renewal application.

(C) Letter of pre-licensing inspection deficiency - a notice of deficiency will be issued to the camp representative on site at the conclusion of the pre-licensing inspection if any deficiencies were noted during the inspection. The camp shall provide documentation that all deficiencies have been corrected within 10 days of the inspection or prior to camp operation, whichever comes first.

(3) In the event that a timely and complete application for license renewal is not processed within timeframe established in paragraph (2)(A) of this subsection, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made in writing to the Environmental and Sanitation Licensing Group. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and to the department.

(e) Late renewal. If a license is not renewed within one year after the expiration date, the license may not be renewed. A new license may be obtained by submitting a new application in compliance with §265.23 of this title (relating to Application and Denial of a New License; Non-transferable). If the license is renewed after its expiration date, the renewed license shall expire on the date the license would have expired had it been renewed timely.

(f) Non-renewal. The department may refuse to renew a license if the applicant has not complied with all final orders resulting

from any violations of these sections. Eligibility for license renewal may be reestablished by meeting all conditions of the orders and complying with the requirements of this section. The department may not renew the license of a youth camp that has not corrected deficiencies identified in a final order before the application for renewal is submitted. Evidence of corrections, such as photography or documentation satisfactory to the department, shall be submitted to and approved by the Environmental Health Enforcement Unit of the Division for Regulatory Services prior to submitting the renewal application to the Regulatory Licensing Unit of the Division.

(g) Application determination affecting license expiration. If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the department. If the application is denied, the existing license does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(h) Reapplication for license upon denial or revocation. A license holder whose license has been denied or revoked may not reapply for a new license for two years from the date of final denial or revocation.

(i) Opportunity for a hearing. When the department proposes to deny an initial or renewal application, it shall give notice of the proposed action in writing and shall provide information on how to request an administrative hearing. The applicant shall make a written request for a hearing within 30 days from the date on the notice letter sent by the department.

(j) Pre-licensing inspections. A youth camp applying for a license renewal may be subject to a pre-licensing inspection. Youth camps shall be in compliance with all provisions of the Act and the rules prior to operation.

(k) Denials.

(1) The department may deny a renewal application for licensing to those who fail to meet the standards established by these rules. Prior to denying a renewal license, the department shall give the applicant an opportunity for a hearing. The hearing shall be conducted in accordance with the Act, the Administrative Procedure Act, Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code §1.21 *et seq.*

(2) A letter of denial of license renewal may be issued within 60 days of the receipt of application if the applicant does not meet the requirements of subsection (c)(3)(A) or (B) of this section.

(3) A letter of denial of license renewal may be issued within 60 days following the first scheduled date of camp operations if the applicant does not meet the requirements of subsection (c)(3)(C) of this section.

(l) Refunds.

(1) If the applicant does not meet the requirements of subsection (c)(3)(A) or (B) of this section, the renewal application may be denied and the renewal license fee, less a handling fee of \$50, may be refunded. If an applicant is denied because the facility does not meet the requirements of subsection (c)(3)(A) or (B) of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (c)(3)(C) of this section, the renewal application may be denied and the renewal license fee may not be refunded.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 21, 2014.

TRD-201400815

Lisa Hernandez

General Counsel

Department of State Health Services

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

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**TITLE 28. INSURANCE**

**PART 1. TEXAS DEPARTMENT OF INSURANCE**

**CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES**

**SUBCHAPTER W. MISCELLANEOUS RULES FOR GROUP AND INDIVIDUAL ACCIDENT AND HEALTH INSURANCE**

**28 TAC §3.3615**

The Texas Department of Insurance adopts new 28 TAC §3.3615, concerning Continuation of Existing Texas Health Insurance Pool Coverage, with minor editorial changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9199). New §3.3615 is necessary to allow the Texas Health Insurance Pool (Pool) to continue existing coverage and avoid a lapse in coverage for its enrollees.

The new section will replace the emergency rule adopted effective December 1, 2013, and published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 8983).

Section 3.3615(a) delays the implementation of Sections 4, 5, and 6(a)-(d) of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, until March 31, 2014, to align with the last day that open enrollment is available in the individual market under federal law. 45 CFR §155.410.

Section 3.3615(b) allows the commissioner, after notice and hearing, to extend the delays described above for a period not to exceed 90 days if:

(1) the guaranteed issue of health benefit coverage is delayed;

(2) the operation of a health benefit exchange in this state is delayed; or

(3) the commissioner determines that health benefit coverage expected to be available on a guaranteed issue basis to a class of individuals eligible for coverage under Chapter 1506, Insurance Code, immediately before the effective date of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, is not reasonably available to those individuals in this state.

Section 3.3615(c) is a severability clause, to ensure that any invalidity of the rule will not affect parts of the rule that can be given effect without the invalid provision or application.

REASONED JUSTIFICATION. TDI adopts §3.3615 under Section 7 of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature,

Regular Session; and Insurance Code §36.001 and §1506.005. Delaying implementation of Section 4 of Senate Bill 1367 (the termination of Pool coverage) allows Pool enrollees to retain their current coverage until the date stated in the rule. This will make health benefit coverage that was expected to be available on a guaranteed issue basis to a class of individuals eligible for coverage under Insurance Code Chapter 1506, immediately before the effective date of Senate Bill 1367, reasonably available to those individuals in this state. It will give Pool enrollees the time necessary to select and purchase appropriate replacement coverage before their current insurance expires.

Delaying the implementation of Section 5 (the exercise of the Pool's recovery rights), Section 6(a)-(d) (the transfer of funds and assessment authority from the Pool to TDI), and the Pool dissolution plan are all necessary to allow for extension of Pool coverage, because the Pool will need to retain these recovery rights, funds, and functions until it is no longer insuring Pool enrollees.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter noted that the Pool provides the insurance that the commenter needs as a dialysis patient, and that the closure of the Pool would deny the commenter that insurance on a guaranteed basis. Closure would also result in the commenter no longer receiving staff-assisted home-hemodialysis because that care is not covered by Medicare. The commenter stated that the Patient Protection and Affordable Care Act (PPACA) prohibits the denial of coverage to those with pre-existing conditions and that the commenter should be allowed to purchase the insurance under that Act. The commenter suggested that the commenter be allowed to keep Pool insurance.

Agency Response: TDI shares the commenter's concerns, but declines to adopt the suggestion at this time. The rule was proposed to give those with Pool coverage time to secure new coverage. That time has been made available. The Legislature has made clear its intent to close down the Pool by passing Senate Bill 1367. That bill gave the commissioner the authority to continue the Pool's insurance operations for limited reasons, and the commissioner has done so. The commissioner believes that a permanent extension of the Pool on the basis that Medicare plus Medicare supplement coverage is inadequate would be beyond the scope of the authority granted by Senate Bill 1367. The suggestion of continuing Pool insurance would go well beyond the scope of the proposed rule, placing substantial additional costs on insurers through Pool assessments. Because insurers were not given sufficient opportunity to comment on such a proposal, this would most appropriately be made a part of a new rule proposal. TDI and the Pool are working to try to find as many alternatives to Pool coverage as possible. TDI is separately adopting a rule to provide the commenter and other enrollees in similar circumstances with an opportunity to purchase Medicare supplement coverage, which would have been the main option for supplemental coverage had the Pool coverage not originally been available. TDI has also had discussions with federal regulators on this issue, resulting in an agreement by federal regulators to provide a special Medicare advantage enrollment period for those with Pool coverage who are eligible for that product. State and federal regulators continue to look for other coverage options for the Pool population. TDI will continue to monitor implementation of federal health reform and market developments to see whether additional changes in its Medicare supplement

rules are justified. Those losing Pool coverage are encouraged to contact TDI for assistance in finding other coverage.

Comment: One commenter supported the extension of the Pool through March 31, 2014, to provide more time to secure other insurance.

Agency Response: TDI appreciates the commenter's support for the proposed rule.

#### NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

Opposed: One individual

For: Fresenius Medical Care

STATUTORY AUTHORITY. The new section is adopted under Section 7 of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session; and Insurance Code §36.001 and §1506.005.

Section 7 of Senate Bill 1367 allows the commissioner to delay by rule the implementation of any part of Sections 1 through 6 of the Act or the Pool dissolution plan established under the Act if:

- (1) the guaranteed issue of health benefit coverage is delayed;
- (2) the operation of a health benefit exchange in this state is delayed; or
- (3) the commissioner determines that health benefit coverage expected to be available on a guaranteed issue basis to a class of individuals eligible for coverage under Chapter 1506, Insurance Code, immediately before the effective date of this Act, is not reasonably available to those individuals in this state.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

Insurance Code §1506.005 provides that the commissioner may adopt rules necessary and proper to implement Chapter 1506 (relating to the Health Insurance Pool).

#### §3.3615. Continuation of Existing Texas Health Insurance Pool Coverage.

(a) The implementation of Sections 4, 5, and 6(a)-(d) of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, and the pool dissolution plan established under that Act, are delayed until March 31, 2014.

(b) The commissioner may, after notice and hearing, delay the implementation of Sections 4, 5, and 6(a)-(d) of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, and the pool dissolution plan established under that Act for a further period not to exceed 90 days if:

- (1) the guaranteed issue of health benefit coverage is delayed;
- (2) the operation of a health benefit exchange in this state is delayed; or
- (3) the commissioner determines that health benefit coverage expected to be available on a guaranteed issue basis to a class of individuals eligible for coverage under Chapter 1506, Insurance Code, immediately before the effective date of Senate Bill 1367, Act of June 14, 2013, 83rd Legislature, Regular Session, is not reasonably available to those individuals in this state.

(c) If a court of competent jurisdiction holds that any part of this rule or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are severable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 19, 2014.

TRD-201400765

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: March 11, 2014

Proposal publication date: December 20, 2013

For further information, please call: (512) 463-6327



## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

### SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS AND OTHER REQUIREMENTS

#### 28 TAC §7.402

The commissioner of insurance adopts amendments to 28 Texas Administrative Code §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs). Amended §7.402 is adopted with nonsubstantive grammatical changes to the proposed text published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9202) and to the existing text that was not published. The changes, however, do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

**REASONED JUSTIFICATION.** The adopted sections amend §7.402(d) to adopt by reference: 1) the 2013 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies; 2) the 2013 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies; 3) the 2013 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies; and 4) the 2013 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. References to the 2012 versions of these documents are removed.

The amendments to §7.402 address risk-based capital and surplus requirements for insurers and HMOs subject to §7.402 (collectively referred to as "carriers"). The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The updated NAIC risk-based capital formulas listed above provide the department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations considering its size and risk exposure.

The 2013 NAIC risk-based capital formulas and instructions for life and fraternal carriers contain changes, including new require-

ments regarding commercial mortgage loans. Otherwise, the 2013 NAIC risk-based capital formulas and instructions are substantially similar to the 2012 versions.

The 2013 NAIC risk-based capital formulas and instructions for property and casualty carriers contain a significant change requiring catastrophe risk (hurricane and earthquake components), to be reported on an information-only basis. Property and casualty carriers are also required to report additional catastrophe loss data. These new requirements will not impact the risk-based capital result for 2013, but the NAIC has included a dual reporting presentation of risk-based capital results exclusive and inclusive of the new catastrophe charge to allow for a testing period and further refinements before the charge impacts capital requirements.

The NAIC amended its Risk-Based Capital for Insurers Model Act in November, 2011, to adjust the threshold at which a trend test applies to fraternal benefit societies and life insurers from 2.5 times the authorized control level to 3.0 times the authorized control level. NAIC included a dual reporting presentation in its 2012 Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies and in its 2012 Life Risk-Based Capital Report Including Overview and Instructions for Companies, which require fraternal benefit societies and life insurers to show: 1) whether 2.5 or 3.0 is the regulatory basis of their domiciliary state, 2) what level of action would be indicated based on the two levels, and 3) to specify what threshold is required by the domiciliary state. Amended §7.402(g)(5) and §7.402(g)(8) modify the trend test threshold from 2.5 to 3.0 times the authorized control level for life insurers and fraternal benefit societies.

Amendments to §7.402(g)(1) and (3) clarify existing requirements by replacing the terms "higher" and "lower" with the name of the action level that a company will be subject to under these paragraphs.

The proposed text has been changed to remove the comma in the first sentence of §7.402(g)(8). The department has made a change to §7.402(f) and (g)(4), which had been marked as "no change." In §7.402(f), the department removed the first word "or" from the first series in the first sentence and added commas to both series in the first sentence. In §7.402(g)(4), the department replaced the existing word "which" with the word "that." These changes were necessary to conform to agency style guidelines. The changes, however, do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

Copies of the 2013 documents adopted by reference in §7.402 are available for inspection in the Financial Analysis section of the Financial Regulation Division, Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, 333 Guadalupe, Austin, Texas 78701.

**HOW THE SECTIONS WILL FUNCTION.** Section 7.402 addresses risk-based capital and surplus requirements for insurers and HMOs subject to §7.402 (collectively referred to as "carriers"). The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The updated NAIC risk-based capital formulas in the adopted section provides the department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations considering its size and risk exposure.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department received no public comments on the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§404.004, 404.005, 441.005, 441.051, 822.210, 822.211, 841.205, 841.206, 841.410, 841.414, 843.404, 884.054, 884.206, 885.401, 982.105, 982.106, and 36.001. Section 404.004 provides that the commissioner's authority to increase any capital and surplus requirements prevails over the general provisions of the Insurance Code relating to specific companies, and §404.005 authorizes the commissioner to set standards for evaluating the financial condition of an insurer. Under §441.005, the commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441.

Section 441.051 specifies the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 822.210 authorizes the commissioner to adopt rules or guidelines to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 822.211 specifies the actions the commissioner may take if an insurance company does not comply with the capital and surplus requirements of Chapter 822.

Section 841.205 authorizes the commissioner to adopt rules or guidelines to require an insurer that writes life or annuity contracts or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds \$10,000, to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of insurers for the protection of policyholders and insurers. Section 841.206 authorizes the commissioner to take regulatory action if the commissioner determines that a life, accident, or health insurance company's capital or surplus is impaired in violation of §841.206.

Section 841.410(b) and (c) require a limited purpose subsidiary life insurance company to comply with the risk-based capital requirements adopted by the commissioner by rule, and maintain risk-based capital in an amount that is at least equal to 300 percent of the authorized control level of risk-based capital adopted by the commissioner. Section 841.414(c) requires a limited purpose subsidiary life insurance company to file an annual report with the commissioner of the limited purpose subsidiary life insurance company's risk-based capital level as of the end of the preceding calendar year containing the information required by the risk-based capital instructions adopted by the commissioner.

Section 843.404 authorizes the commissioner to adopt rules to require a HMO to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of HMOs for the protection of enrollees. Section 884.054 specifies the capital stock and surplus requirements for stipulated premium insurance companies. Section 884.206 authorizes the commissioner to adopt rules to require an insurer that writes or assumes life insurance, annuity contracts, or accident and health insurance for a risk to one person in an amount that exceeds \$10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers.

Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the department to use the annual report in determining a society's financial solvency.

Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

*§7.402. Risk-Based Capital and Surplus Requirements for Insurers and HMOs.*

(a) Purpose. The purpose of implementing a risk-based capital and surplus provision is to require a minimum level of capital and surplus to absorb the financial, underwriting, and investment risks assumed by an insurer or a health maintenance organization.

(b) Scope.

(1) Life companies. This section applies to any insurer authorized to do business in Texas as an insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that exceeds \$10,000 including: capital stock companies, mutual life companies, limited purpose subsidiary life insurance companies, and stipulated premium insurance companies.

(2) Property and casualty companies. This section applies to all domestic, foreign, and alien property and casualty companies subject to the provisions of Insurance Code §822.210 and §982.106, including county mutual insurance companies that do not meet the express criteria contained in Insurance Code §912.056(f), but excluding monoline financial guaranty insurers, monoline mortgage guaranty insurers, title insurers, and those insurers subject to Insurance Code §822.205.

(3) Health Maintenance Organizations. This section applies to all domestic and foreign health maintenance organizations subject to the provisions of Insurance Code Chapter 843 and insurers that file the NAIC Health Annual Statement Blank with the department under department filing requirements.

(4) Fraternal benefit societies. This section applies to all domestic and foreign fraternal benefit societies.

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

(1) Annual financial statement--The annual statement blank to be used by insurance companies, as promulgated by the NAIC and as adopted by the commissioner.

(2) Authorized control level--The result determined under the RBC formula in accord with the RBC instructions.

(3) NAIC--National Association of Insurance Commissioners.

(4) RBC--Risk-based capital.

(5) RBC formula--NAIC risk-based capital formula.

(6) RBC instructions--NAIC Risk-Based Capital Report Including Overview and Instructions for Companies.

(7) Total adjusted capital--An insurer's adjusted statutory capital and surplus as determined under the RBC formula in accord with the RBC instructions.

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following:

(1) The 2013 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula.

(2) The 2013 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula.

(3) The 2013 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula.

(4) The 2013 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula.

(e) Filing requirements. All companies subject to this section must file electronic versions of the 2013 RBC reports and any supplemental RBC forms and reports with the NAIC in accord with and by the due dates specified in the RBC instructions.

(f) Conflicts. In the event of a conflict between the Insurance Code, any rule of the department, any specific requirement of this section, and the RBC formula or the RBC instructions, the Insurance Code, rule, or specific requirement of this section takes precedence and in all respects controls. It is the intent of this section that the adoption by reference of the NAIC Risk-Based Capital Reports Including Overview and Instructions for Companies not repeal or modify or amend any rule of the department or any provision of the Insurance Code.

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital requires the following actions related to an insurer within the specified ranges:

(1) An insurer reporting total adjusted capital of 150 percent to 200 percent of authorized control level risk-based capital institutes a company action level under which the insurer must prepare a comprehensive financial plan that identifies the conditions that contribute to the company's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the company's financial condition, both with and without the proposed corrections. The plan must list the key assumptions underlying the projections and identify the concerns associated with the insurer's business. The RBC plan must be submitted within 45 days of filing the RBC report with the NAIC. After review, the commissioner will notify the company if the plan is satisfactory or not satisfactory. If the commissioner notifies the company that the plan is not satisfactory, the company must prepare a revised plan and submit it to the commissioner. Failure to file this comprehensive financial plan triggers the regulatory action level described in this subsection.

(2) An insurer reporting total adjusted capital of 100 percent to 150 percent of authorized control level risk-based capital triggers a regulatory action level initiative. At this action level, an insurance company must file an RBC plan or revised RBC plan within 45 days of filing the RBC report with the NAIC, and the commissioner

must perform any examinations or analyses to the insurer's business and operations that are deemed necessary. The commissioner may issue orders specifying corrective actions to be taken or may require other appropriate action.

(3) An insurer reporting total adjusted capital of 70 percent to 100 percent of authorized control level risk-based capital triggers an authorized control level. In addition to the remedies available at the company and regulatory action levels described in this subsection, the commissioner may take other action deemed necessary, including initiating a regulatory intervention to place an insurer under regulatory control.

(4) An insurer reporting total adjusted capital of less than 70 percent of authorized control level triggers a mandatory control level that subjects the insurer to one of the following actions:

(A) being placed in supervision or conservation;

(B) being determined to be in hazardous financial condition as provided by Insurance Code Chapter 404 and §8.3 of this title (relating to Hazardous Conditions) regardless of percentage of assets in excess of liabilities;

(C) being determined to be impaired as provided by Insurance Code §§404.051 and 404.052 or 841.206; or

(D) any other applicable sanctions under the Insurance Code.

(5) A life insurer subject to this section is subject to a trend test described in the RBC formula, if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. Any life insurer that trends below 190 percent of total adjusted capital to authorized control level risk-based capital triggers the company action level.

(6) A property and casualty insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. If the result of the trend test as determined by the formula is "YES," the insurer triggers regulatory attention at the company action level.

(7) A health insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent and triggers the trend test determined in accord with the trend test calculation included in the Health RBC instructions. If the result of the trend test as determined by the formula is "YES," the insurer triggers regulatory attention at the company action level.

(8) A fraternal benefit society subject to this section is subject to a trend test described in the RBC formula if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. Any fraternal benefit society that trends below 190 percent of total adjusted capital to authorized control level risk-based capital triggers the company action level.

(h) Prohibition on announcements. Except as otherwise required under the provisions of this section, making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, poster, over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to any component derived in the calculation, by any insurer, agent, broker, or the person engaged in any manner in the insurance business would be misleading and is prohibited. Any violation of this subsection may be considered a violation of Insurance



Code Chapter 541, regulating unfair methods of competition and unfair or deceptive acts or practices.

(i) Prohibition on use in ratemaking. The RBC instructions and any related filings are intended solely for use by the commissioner in monitoring the solvency of insurers subject to this section and in taking corrective action with respect to insurers, and must not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write.

(j) Limitations. The requirements of this section do not reduce the amount of capital and surplus otherwise required by the Insurance Code, department rules, or by authority of the commissioner of insurance as provided by law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2014.

TRD-201400775  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Effective date: March 12, 2014  
Proposal publication date: December 20, 2013  
For further information, please call: (512) 463-6327

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 1. GENERAL LAND OFFICE**

**CHAPTER 3. GENERAL PROVISIONS**

**SUBCHAPTER C. SERVICES AND PRODUCTS**

**31 TAC §3.31**

The General Land Office (GLO) adopts an amendment to §3.31, concerning Fees, without changes to the proposed text as published in the January 10, 2014, issue of the *Texas Register* (39 TexReg 191). The amended section will not be republished.

**Background**

The GLO amended the applicable fees charged for digital transfer of images of maps and archival documents; amended the fees charged for digital transfer of images, maps and archival documents; and provided a fee for a flash drive and transferring large images via the internet. In addition, the hourly fee was eliminated and a set cost per image was included.

**Comments**

There were no comments received during the 30-day comment period.

**Legal Authority**

The amendment is adopted under Texas Natural Resources Code §31.064, which provides the GLO with the authority to

set and collect certain fees, and §51.174 which authorizes the commissioner to set and collect certain fees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 2014.

TRD-201400736  
Larry Laine  
Chief Clerk, Deputy Land Commissioner  
General Land Office  
Effective date: March 10, 2014  
Proposal publication date: January 10, 2014  
For further information, please call: (512) 475-1859

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

**CHAPTER 1. ORGANIZATION AND ADMINISTRATION**

**SUBCHAPTER H. PROFESSIONAL CONDUCT**

**37 TAC §1.111**

The Texas Department of Public Safety (the department) adopts amendments to §1.111, concerning Ten General Orders. These amendments are adopted without changes to the proposed text as published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9452) and will not be republished.

Amendments to this rule were necessary to reflect current policy in use by the department.

No comments were received regarding the adoption of these amendments.

This adoption is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201400829  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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Proposal publication date: December 27, 2013  
For further information, please call: (512) 424-5848

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SUBCHAPTER J. AIRCRAFT OPERATIONS

37 TAC §1.143

The Texas Department of Public Safety (the department) adopts new §1.143, concerning Use of Unmanned Aircraft by a Law Enforcement Authority. This new section is adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7925) and will not be republished.

The 83rd Legislative Session enacted House Bill 912 which created Texas Government Code, Chapter 423, the Texas Privacy Act. Texas Government Code, §423.007, authorizes the department to adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in Texas. This proposal was necessary to establish those guidelines.

The department accepted comment on the proposed rules through December 9, 2013. Written comments were submitted by Will Johnson, Police Chief of the City of Arlington. Substantive comments received, as well as the department's responses, thereto, are summarized below:

COMMENT: The City of Arlington recommends that one point-of-contact with the executive branch and one point-of-contact with the legislative branch be established and that electronic reporting be acceptable. Additionally, the City of Arlington recommended a standardized form for law enforcement agencies to complete and submit.

RESPONSE: Department staff does not believe the comment recommendation can be implemented under the new law and therefore cannot agree to the recommendation. Staff interprets the new statute to require law enforcement agencies to individually submit required reports to the governor, lieutenant governor, and legislators.

This adoption is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §423.007, which authorizes the department to adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848

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CHAPTER 9. PUBLIC SAFETY  
COMMUNICATIONS

SUBCHAPTER F. STATE AMATEUR RADIO  
OPERATOR SERVICE

37 TAC §§9.61 - 9.68

The Texas Department of Public Safety (the department) adopts new §§9.61 - 9.68, concerning State Amateur Radio Operator Service. These rules are adopted without changes to the proposed text as published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9453) and will not be republished.

Amateur radio operators are often needed to assist in communications in an emergency. There was no mechanism to allow state employees who are amateur radio operators to take paid leave in order to assist in disaster response operations as there is for other needed state employees. In response, Texas Government Code, §661.919, authorizes state employees who are amateur radio operators to, with certain limitations, take leave in order to participate in disaster relief operations with the approval of their supervisor and the governor. A maximum of 350 state employees may be granted a maximum of 10 days of leave with pay per year to participate in disaster response operations, within the State of Texas. These rules are necessary to establish the guidelines for this service.

No comments were received regarding the adoption of these rules.

This adoption is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848

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CHAPTER 15. DRIVER LICENSE RULES  
SUBCHAPTER C. EXAMINATION  
REQUIREMENTS

37 TAC §15.61

The Texas Department of Public Safety (the department) adopts new §15.61, concerning Third Party Skills Testing. This new section is adopted with changes to the proposed text as published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9454) and will be republished.

The 83rd Texas Legislature amended Transportation Code, §521.165, which authorizes the department to permit third parties to administer the skills test for a driver license on the department's behalf. The new rule creates a program wherein the department may enter into Memorandum of Understanding

(MOU) with certified driver education schools to perform the testing under certain circumstances.

The department accepted comments on the proposed rule through January 27, 2014. Written comments were submitted by Patrick Barrett representing Driver Ed in a Box, Gary King representing the Texas Professional Driver Education Association, Dee Conrad representing herself as an owner of a driver education school, and Bob Kamm representing I Drive Safely. Changes were made to proposed new §15.61(c)(4) based on the comments received by the department. Substantive comments received, as well as the department's responses, thereto, are summarized below:

COMMENT: Regarding §15.61(c)(4), Bob Kamm objected to the requirement that an instructor never have been convicted of Driving while Intoxicated (DWI) or Driving under the Influence (DUI) because TEA certification allows an instructor to have such convictions as long as it is not within seven years. He indicated this will put a lifetime ban on an instructor becoming an examiner and does not allow rehabilitated individuals to become examiners.

RESPONSE: The department agrees with this recommendation. The department may employ a person if he or she had one of the referenced convictions prior to employment so this requirement would be holding instructors to a higher standard than is applied to department employees. The department changed the wording in §15.61(c)(4) to mirror Texas Education Agency (TEA) standards: Has not been convicted of: (C) Driving while intoxicated within seven years; or (D) Driving under the influence within seven years.

COMMENT: Regarding §15.61(b)(3), Gary King objected to the requirement to teach the Impact Texas curriculum because it will require the authorized entities to add a new element to the state approved driver education curriculum. He stated that the change would be expensive to schools using their own proprietary curriculum due to the addition and removal of materials and requirement for approval by TEA. Additionally, he stated that there is no corresponding statute that will guide implementation standards for the new curriculum thereby creating multiple requirements and questions to comply.

RESPONSE: The department disagrees with this recommendation. The Impact Texas curriculum is not being incorporated into the current TEA approved courses, but will be taught in addition to the current requirements. It will not require removal or addition of current materials or reapproval by TEA. Additionally, the statute allows the department to set the standards by which an authorized entity may administer the skills test, so it is authorized by Transportation Code, §521.165 to set the requirements to participate in the program.

COMMENT: Regarding §15.61(b)(3) concerning teaching the Impact Texas curriculum, Bob Kamm suggested adding (d) to clarify that the curriculum will be taught to all applicants regardless of age.

RESPONSE: The Impact Texas curriculum, formally called Impact Texas Teen Drivers, will be applicable to drivers of all ages. However, the MOU is being developed to initially implement the program on a limited basis for applicants under 18 years of age to ensure its success. The department will expand the program to adults in the future and those details will be included in the MOU. The department needs the ability to work with the authorized organizations to ensure that all parties are satisfied with the program requirements before it is expanded to include all persons required to pass a skills examination before being issued

a driver license. This falls in line with the department's duty to ensure highway safety.

COMMENT: Regarding §15.61(b)(4), Gary King objected to the MOU reference because the MOU has not been made available for review at this time.

RESPONSE: The department disagrees with this recommendation. The MOU is currently in development and a focus group, consisting of driver education providers, will be convened to review the draft and solicit input and comments regarding the terms of the MOU. No entity will be required to sign the MOU without the opportunity to review the agreement.

COMMENT: Regarding §15.61(c)(2), Gary King objected to the requirement that a driver education instructor hold an instructor license issued by TEA for two years prior to administering skills tests because it restricts the authorized organization from using its employees as it sees fit. He also states that instructors receive extensive training and TEA approval and will receive the department's skills test training so this requirement is restrictive and causes unnecessary burden on the organization. Patrick Barrett also objects to this requirement because he believes this is over and above what is required of department employees and this restriction will make it difficult to hire additional staff to participate in the program.

RESPONSE: The department disagrees with this objection. The department is responsible for highway safety and its employees undergo extensive training before being allowed to administer skills examinations. Additionally, the department is working with the American Association of Motor Vehicle Administrators (AAMVA) to have its skills examination program certified by the association, which will require at least one year of employment prior to administering exams. Since department employees are in the driver license issuance and testing environment daily and are observed and mentored by seasoned driver license customer service representatives and supervisors prior to being allowed to administer examinations on their own, this requirement is not onerous for the organizations or instructors.

This adoption is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.165, which authorizes the department to delegate the administration of skills examinations to authorized third parties.

*§15.61. Third Party Skills Testing.*

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

(1) Authorized organization--An entity that has entered into a Memorandum of Understanding with the department to administer the driving skills test for a non-commercial driver license on the department's behalf.

(2) Examiner--An individual certified by the department to conduct a skills test.

(b) An organization is eligible to enter into a Memorandum of Understanding with the department and to administer a skills test for a non-commercial driver license if it:

(1) Maintains a valid driver education school license issued by the Texas Education Agency;

(2) Has held the driver education school license issued by the Texas Education Agency for a minimum of two years;

(3) Teaches the Impact Texas curriculum to its driver education students; and

(4) Complies with the requirements of the Memorandum of Understanding with the department.

(c) An individual employed by an authorized organization is eligible to become an examiner and conduct skills tests if he or she:

(1) Maintains a valid driver education instructor license issued by the Texas Education Agency;

(2) Has held the driver education instructor license issued by the Texas Education Agency for at least two years;

(3) Maintains a valid, unexpired Texas driver license;

(4) Has not been convicted of:

(A) Any felony;

(B) Criminally negligent homicide;

(C) Driving while intoxicated within seven years; or

(D) Driving under the influence within seven years.

(5) Does not have six or more points assigned to his or her Texas driver license;

(6) Has successfully completed the department prescribed training set out in the Memorandum of Understanding; and

(7) Conforms to the standards of the Memorandum of Understanding between the department and his or her employer.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

### 37 TAC §15.142

The Texas Department of Public Safety (the department) adopts amendments to §15.142, concerning Agreement to Monitor Certain Records and Purchase Driver Record Information. Amendments to this section are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7926) and will not be republished.

The 81st Texas Legislature enacted House Bill 2730 which added Texas Transportation Code, §521.060 and the 82nd Texas Legislature enacted House Bill 2657, which renumbered §521.060 to §521.062, allowing the department to establish a driver record monitoring pilot program by rule for a period not to exceed one year. The amendments to this rule establish the department's intent to initiate a pilot monitoring program with

up to three persons eligible pursuant to Texas Transportation Code, §521.062(b). All requirements relating to privacy and the release of information are contained within the statute. If the department determines that the program will be recommended as a permanent program, a formal report will be prepared and submitted to the lieutenant governor, the speaker of the house of representatives and each member of the legislature in accordance with Texas Transportation Code, §521.062(m), prior to a request being submitted to the Public Safety Commission. This rule will then be modified to accommodate a permanent program.

No comments were received regarding the adoption of these amendments.

This adoption is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.062(a), which authorizes the department to establish by rule a driver record monitoring pilot program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 27. CRIME RECORDS SUBCHAPTER D. MISSING PERSONS CLEARINGHOUSE

### 37 TAC §27.42

The Texas Department of Public Safety (the department) adopts amendments to §27.42, concerning Criteria for Entry into the Missing Persons Bulletin. Amendments to this section are adopted without changes to the proposed text as published in the November 8, 2013, issue of the *Texas Register* (38 TexReg 7927) and will not be republished.

This rule relates to the acceptable documentation a law enforcement agency must possess before information on a missing or unidentified deceased/living person can be entered into the Texas Department of Public Safety Missing Persons Online Bulletin. The amendments are necessary because the bulletin is now published online, updated as necessary, and therefore agencies may submit entries at any time.

No comments were received regarding the adoption of these amendments.

This adoption is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 209. FINANCE

The Texas Department of Motor Vehicles (department) adopts amendments to §209.2, Charges for Dishonored Checks, and §209.23, Methods of Payment, without changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9212). The amended rules will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

The purpose of the amendments is for the department to standardize fee rules to reflect standard transaction fees resulting from department customers' use of credit cards and Automated Clearing House (ACH) transactions to pay for department fees and to clarify or update other department rules concerning fees. The rule revisions will subject all credit card and ACH transactions to the standard fees charged by whatever third-party entity processes these transactions. Most department transactions will be handled through the Texas Department of Information Resources' (DIR) Texas.gov system. Under Government Code, §2054.113, state agencies may not duplicate an infrastructure component of DIR's Texas.gov system unless they have an exemption under DIR's statute. The fees for use of DIR's Texas.gov system for online transactions are set pursuant to Government Code, §2054.2591. The department will not charge or receive any fees in addition to those charged by the third-party transaction processors.

Existing §209.23(a)(1) - (4) authorizes payment of department fees 1) with a valid credit or debit card issued by a financial institution chartered by a state or the United States, or a nationally recognized credit organization; 2) by electronic funds transfer; 3) with a personal check, business check, cashier's check or money order; or 4) by cash in person. Amendments to §209.23(a)(1) add a requirement that the department approve credit or debit cards used to pay fees. Existing §§218.15(1), 218.42(b)(2)(A), and 219.11(f)(1)(A) already require department approval of credit cards used to pay fees. These sections are simultaneously being amended because they are incomplete with respect to debit cards and duplicative with respect to credit cards. Amendments to §209.23(a)(3) disapprove of personal or business checks as methods of payment for 72 or 144 hour permits. Amendments to §209.23(a)(5) add pre-payment of certain department fees

by escrow accounts, already authorized by the Transportation Code, as an approved method to pay these fees. See Texas Transportation Code at §§502.093 (annual permits), 502.094 (72 or 144 hour permits), 502.095 (one-trip or 30-day trip permits), 621.351 (oversize or overweight permits), 623.096 (manufactured or industrialized housing), 643.004 (credentialing/operating authority for motor carriers), and 645.002 (Unified Carrier Registration). Amendments to §209.23(a)(5) also add a reference to the use of Permit Account Cards (PAC), a type of escrow account, as an approved method to pre-pay Oversize/Overweight vehicle permit fees, as anticipated by the simultaneous amendment to §219.11(f)(1)(A).

#### CHANGES IN CREDIT CARD CHARGES

Existing §209.23(b) requires that persons paying department fees "by credit card, debit card, or electronic funds transfer will pay the amount of the service charge per transaction along with the applicable fee." Amended §209.23(b) establishes that the service charge for all department credit card and ACH transactions will be whatever service fee is applied by the third-party transaction processor, which in most cases will be the standard DIR Texas.gov system fee, set pursuant to Government Code, §2054.2591. Existing §209.2 is also amended to reflect that the applicable transaction charges will apply. Amending these sections to require payment of service fees is a necessity because the current sections set reimbursements to the department for fees paid by credit card below the actual cost of processing those transactions. The payment of these transaction fees results in an annual loss to the department of \$1,330,000. ACH fees which are currently \$.25 are paid by the department, but are expected to rise to \$3 per transaction and would result in an increase in agency costs of approximately \$55,000. Pass-through of the applicable processing fees will eliminate this loss. The department will continue charging the current service charge until these amendments become effective and the department implements any new service charge for the particular transaction.

#### COMMENTS

No comments on the proposed amendments were received.

### SUBCHAPTER A. COLLECTION OF DEBTS

#### 43 TAC §209.2

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the department with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §1001.009, which authorizes the board to adopt rules regarding the collection of fees for department goods and services, including authorizing a service charge for a credit card payment in addition to the fee; Transportation Code, §621.356, which authorizes the board to adopt rules prescribing methods of payment for fees for oversize/overweight permits; Transportation Code, §623.076, which authorizes the board to adopt rules to accept credit cards for payment of oversize/overweight permits, and allows the department to require the payment of a service charge for use of credit cards; Transportation Code, §643.004, which authorizes the board to adopt rules on the methods of payment of fees for commercial motor carrier registrations, and authorizes requiring the payment of fees for use of a credit card to make such payments; Transportation Code, §645.002,

which authorizes the board to adopt rules regarding methods of payment for fees for filing proof of insurance for commercial vehicles, including the authority to require payment of a fee for use of a credit card to make such payments; and Transportation Code, §646.003(d), which authorizes the board to adopt rules regarding methods of payment for motor transportation broker fees, including authority to require the payment of a fee for use of credit cards to make such payments.

#### CROSS REFERENCE TO STATUTE

Government Code, §2054.2591 and Transportation Code, Chapters 501, 502, 621, 623, 643, 645, and 646.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201400788

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 467-3853



## SUBCHAPTER B. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES

### 43 TAC §209.23

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the department with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §1001.009, which authorizes the board to adopt rules regarding the collection of fees for department goods and services, including authorizing a service charge for a credit card payment in addition to the fee; Transportation Code, §621.356, which authorizes the board to adopt rules prescribing methods of payment for fees for oversize/overweight permits; Transportation Code, §623.076, which authorizes the board to adopt rules to accept credit cards for payment of oversize/overweight permits, and allows the department to require the payment of a service charge for use of credit cards; Transportation Code, §643.004, which authorizes the board to adopt rules on the methods of payment of fees for commercial motor carrier registrations, and authorizes requiring the payment of fees for use of a credit card to make such payments; Transportation Code, §645.002, which authorizes the board to adopt rules regarding methods of payment for fees for filing proof of insurance for commercial vehicles, including the authority to require payment of a fee for use of a credit card to make such payments; and Transportation Code, §646.003(d), which authorizes the board to adopt rules regarding methods of payment for motor transportation broker fees, including authority to require the payment of a fee for use of credit cards to make such payments.

#### CROSS REFERENCE TO STATUTE

Government Code, §2054.2591 and Transportation Code, Chapters 501, 502, 621, 623, 643, 645, and 646.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 215, Subchapter A, §215.2, Definitions; Conformity with Statutory Requirements; Subchapter B, §215.21, Objective; §215.22, Prohibited Disclosures and Communications; §215.26, Form of Petitions, Pleadings, and the Like; §215.27, Complaints; §215.28, Docket; §215.30, Filing of Documents; §215.31, Cease and Desist Orders; §215.32, Enlargement of Time; §215.34, Notice of Hearing in Adjudicative Proceedings; §215.35, Reply; §215.37, Recording and Transcriptions of Hearing Cost; §215.39, Waiver of Hearing; §215.41, Presiding Officials; §215.43, Conduct and Decorum; §215.44, Evidence; §215.49, Service of Pleading, Petitions, Briefs, and the Like; §215.51, Findings and Recommendations of Hearing Officer; §215.52, Filing of Exceptions; §215.53, Form of Exceptions; §215.55, Final Decision; §215.56, Submission of Amicus Briefs; Subchapter C, §215.83, Renewal of Licenses; §215.86, Processing of License Applications, Amendments, or Renewals; Subchapter D, §215.119, Standing to Protest; Subchapter G, §215.201, Objective and Definitions; §215.202, Filing of Complaints; §215.205, Mediation; Settlement; §215.206, Hearings; §215.207, Contested Cases: Proposals for Decision and Final Orders; §215.209, Incidental Expenses; and Subchapter I, §215.301, Scope and Purpose; §215.305, Filing of Complaints, Protests, and Petitions; §215.306, Referral to SOAH; §215.307, Notice of Hearing; §215.308, Reply to Notice of Hearing and Default Proceedings; §215.309, Recording and Transcriptions of Hearing Cost; §215.313, Official Notice of Board Records; §215.314, Cease and Desist Orders; and §215.317, Motion for Rehearing, without changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9215). The amended rules will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

The amendments implement House Bill (HB) 1692, HB 2741, Senate Bill (SB) 162, and SB 854, 83rd Legislature, Regular Session, 2013. The amendments modify references to the Motor Vehicle Division (MVD), the director of the MVD, and the Board for greater flexibility in department organization and procedure. The amendment to the definition of Board to include a Board delegate also adds greater flexibility throughout the chapter. Nonsubstantive amendments were made for readability and

to correct punctuation, grammar, and capitalization throughout the amended sections.

The amendments simplify licensing requirements; implement transfer of lemon law and warranty performance contested case hearings from the State Office of Administrative Hearings (SOAH) to the department; require pre-hearing mediation for contested cases involving franchise issues, lemon law, and warranty performance cases; and implement change by the department in processing such contested cases.

Amendments to §215.2, Definitions; Conformity with Statutory Requirements, modify definitions of existing terms and add new terms to provide for flexibility in department functions and to more accurately reflect department processes. The amendment adopts the following new defined terms: "appropriate department office," "final order authority," "hearings examiner," and "motion for rehearing authority." The amendment adopts modifications to the definitions of the following terms: "Board" (to include Board delegate), "director," "division," and "hearing officer" (to include hearings examiner in addition to an administrative law judge (ALJ)). The amendment also deletes the definition of "division's offices" as this term is no longer necessary and adds the new term "appropriate department office." Addition and deletion of definitions requires renumbering of the paragraphs in this section.

Amendments to §215.21, Objective, implement HB 1692 by clarifying that the adjudicative practice and procedure provisions in Chapter 215, Subchapter B, govern contested cases filed on and after January 1, 2014, under Occupations Code, §2301.204, relating to warranty performance, and under Occupations Code, Subchapter M, §§2301.601 - 2301.613, relating to the lemon law.

Amendments to §215.22, Prohibited Disclosures and Communications, maintain gender neutrality and broaden the ex parte communication prohibition to any employee of the department assigned to render a decision in a contested case.

Amendments to §215.26, Form of Petitions, Pleadings, and the Like, clarify that the original copies of petitions, pleadings, motions, briefs, or other instruments permitted or required to be filed in a contested case proceeding must be signed and filed with the appropriate department office.

Amendments to §215.27, Complaints, replace the term "division" with "appropriate department office" or "department" to clarify that the requirements regarding a filed complaint apply to all complaints filed with the department, not just those complaints that are filed with a particular division.

Amendments to §215.28, Docket, replace the term "division" with "department" for flexibility in departmental organization regarding maintenance of a docket record and assignment of a docket number in departmental proceedings.

Amendments to §215.30, Filing of Documents, replace the term "Motor Vehicle Division" with "department" and replace the terms "division" or "division's offices" with either "department" or "appropriate department office" to clarify that the filing provisions apply to all documents filed with the department under this chapter, not just those filed with a particular division. The amendments clarify that if a document is filed by mail, the document must be sent to the department by first-class mail. The amendments simplify the language of §215.30(e) for readability.

Amendments to §215.31, Cease and Desist Orders, are adopted for readability.

Amendments to §215.32, Enlargement of Time, replace the term "division's offices" with "appropriate department office" for flexibility in departmental organization. The amendments clarify that a timely-filed document is received by the appropriate department office by a particular deadline, rather than being received in a specific division. Additional nonsubstantive amendments are adopted for clarity and readability.

Amendments to §215.34, Notice of Hearing in Adjudicative Proceedings, delete the phrase "before the Board," because the Board is not the final authority in all adjudicative proceedings. The amendments clarify that notice of hearing requirements apply in an adjudicative proceeding, regardless of whether the Board or a hearings examiner has final authority.

Amendments to §215.35, Reply, replace the term "Board" with "appropriate department office" to clarify that a party responding to a notice of hearing is required to file the original with the appropriate department office rather than with the Board; and to clarify that the department may extend the time by which reply may be filed.

Amendments to §215.37, Recording and Transcriptions of Hearing Cost, update antiquated language, to reflect that either the Board or a hearings examiner may have final order authority under the law, to clarify that the department is responsible for transmitting the record to the appellate court, and to clarify that it is the department that assesses or waives the cost for record preparation and transmission.

Amendments to §215.39, Waiver of Hearing, clarify that entry of an agreed order or approval of an agreed order is not limited to Board action.

Amendments to §215.41, Presiding Officials, replace the term "Board" with "appropriate department office" for flexibility in departmental organization. By designating that a hearing officer will preside over a contested case hearing, the amendments broaden the list of entities or individuals that may evaluate the validity of a recusal or a motion to recuse, thereby affording greater flexibility in departmental organization and function.

Amendments to §215.43, Conduct and Decorum, replace the term "Board" with "department" to broaden the list of entities or individuals that may prescribe disciplinary action for violation of conduct and decorum requirements, thereby affording greater flexibility in departmental organization and function.

Amendments to §215.44, Evidence, replace the term "division" with "department" to clarify that licensing files are the files of the department, rather than the possession of a particular division.

Amendments to §215.49, Service of Pleading, Petitions, Briefs, and the Like, replace the term "division" with "appropriate department office" to clarify that a copy of a document served upon a party in an adjudicative proceeding must also be served upon the appropriate department office, rather than upon a particular division.

Amendments to §215.51, Findings and Recommendations of Hearing Officer, clarify that the hearing officer is required to issue a proposal for decision in contested cases in which the hearing officer is not the final order authority and does not issue the final order. For example, a SOAH ALJ will issue a proposal for decision in a franchise dealer complaint or a franchise protest case.

Amendments to §215.52, Filing of Exceptions, clarify that a party that files a request for extension of time for the filing of exceptions to a proposal for decision must serve the document on the

department, as well as on the other parties. Because no proposal for decision is issued in contested cases where the hearing officer has final order authority, the amendments clarify that exceptions will not be filed in such cases.

Amendments to §215.53, Form of Exceptions, make the provisions easier to understand.

Amendments to §215.55, Final Decision, clarify when a decision becomes final. In lemon law and warranty performance cases initiated by a complaint filed with the department before January 1, 2014, and in contested cases other than lemon law and warranty performance complaints, the Board has final order authority. In these cases, the Board will issue an order after considering the SOAH ALJ's proposal for decision and the parties' exceptions and replies, if filed. In lemon law and warranty performance cases filed with the department on or after January 1, 2014, the department's hearings examiner will have final order authority. Unless a party files a motion for rehearing with the appropriate motion for rehearing authority, an order is final and binding on all parties as of the effective date of the order. In a case where the final order is issued by the Board, the motion for rehearing authority will be the Board. In accordance with Occupations Code, §2301.713, in lemon law and warranty performance cases filed with the department on or after January 1, 2014, the motion for rehearing authority is the chief hearings examiner.

Amendments to §215.56, Submission of Amicus Briefs, clarify that "person," not a "party," may file an amicus brief. "Person" is defined in Occupations Code, §2301.002(27) as "a natural person, partnership, corporation, association, trust, estate, or any other legal entity." In addition, amendments delete the references to the Board so that either the trier of fact or the final order authority may consider an amicus brief filed in a contested case.

Amendments to §215.83, Renewal of Licenses, change all references of "division" to "department" to allow executive management and the Board greater flexibility regarding the organization of the department.

Amendments to §215.86, Processing of License Applications, Amendments, or Renewals, implement SB 162 and HB 2741, and give greater flexibility for departmental organization. Amendments to §215.86(f) implement Occupations Code, Chapter 55, as amended by SB 162, 83rd Legislature, Regular Session, 2013. The department will give preference to the order of processing a license, amendment, or renewal application submitted by a military spouse and will notify the military spouse of the license renewal requirements.

Amendments to §215.119, Standing to Protest, implement SB 854. When a franchised dealer's relocation application triggers the affected county analysis required under Occupations Code, §2301.6521, determination of whether another dealer has standing to protest now requires an analysis of whether the relocating dealer is moving closer to the franchised dealer desiring to protest the relocation application. The amendments provide specific protest standing qualifications under varying circumstances.

Amendments to §215.201, Objective and Definitions, simplify the language for readability; delete the term "ALJ" because that term is defined in §215.2, Definitions; Conformity with Statutory Requirements; delete the term "final order authority" because amendments to §215.2, Definitions; Conformity with Statutory Requirements add a definition for the term "final order authority"; renumber the subsection; and clarify that a hearings examiner may formally or informally dispose of a contested matter, including one by stipulation, agreed order, settlement, or consent.

Amendments to §215.202, Filing of Complaints, clarify that the department's hearings examiner, rather than an ALJ, will issue an order, not a proposal for decision, within 150 days following commencement of a lemon law proceeding that is filed with the department on or after January 1, 2014.

Amendments to §215.205, Mediation; Settlement, simplify the language and clarify that staff will implement pre-hearing mediation to attempt to resolve any contested case matter filed on or after January 1, 2014, for which the department has jurisdiction.

Amendments to §215.206, Hearings, delete and replace references to "ALJ" and "SOAH" to clarify that for lemon law and warranty performance complaints filed with the department on or after January 1, 2014, a hearings examiner will conduct the contested case hearings.

Amendments to §215.207, Contested Cases: Proposals for Decision and Final Orders, delete "Proposals for Decision and" from the section title and distinguish treatment of a motion for rehearing depending on the final order authority and date the contested case is filed with the department. The amendments also provide that a motion for rehearing of a final order issued by the Board in a lemon law or warranty performance contested case shall follow the procedures in Chapter 215, Subchapter I, relating to the Practice and Procedure for Hearings Conducted by SOAH. The amendments clarify that the department's hearings examiner will issue a final order, including findings of fact and conclusions of law, as opposed to issuing a proposal for decision. The amendments also provide that a motion for rehearing is to be filed with the motion for rehearing authority. For example, a motion for rehearing and replies to the motion for rehearing will be considered by the Board in a lemon law or warranty performance contested case that was decided by the Board. A motion for rehearing and replies to the motion for rehearing will be considered by the director in a lemon law or warranty performance contested case that was decided by the director. In a lemon law or warranty performance contested case where the department's hearings examiner or the chief hearings examiner was the final order authority, a motion for rehearing and replies to the motion for rehearing will be considered by the chief hearings examiner.

Amendments to §215.209, Incidental Expenses, replace the term "ALJ" with the term "hearings examiner" to clarify that the hearings examiner, rather than a SOAH ALJ, will calculate incidental expenses. Additional nonsubstantive amendments make the provisions easier to understand.

Amendments to §215.301, Scope and Purpose, implement HB 1692. The amendments clarify that contested cases filed on and after January 1, 2014, under Occupations Code, §2301.204 (relating to warranty performance) or under Occupations Code, Subchapter M, §§2301.601 - 2301.613 (relating to lemon law) are governed by Chapter 215, Subchapter B (relating to Adjudicative Practice and Procedure).

Amendments to §215.305, Filing of Complaints, Protests, and Petitions, add "Mediation" to the section title because the amendments address new mandatory mediation requirements promulgated by HB 1692, including mediation before a contested case is referred to SOAH.

Amendments to §215.306, Referral to SOAH, replace the term "division's" with "department's" for flexibility in departmental organization. Additional amendments to §215.306 implement HB 1692 to clarify that lemon law and warranty performance cases filed with the department on or after January 1, 2014, will be heard and decided by a department hearings examiner. Amend-



ments to §215.306(5) continue to allow a SOAH ALJ to issue a cease and desist order, but acknowledge that the department or hearing examiners are also authorized to address issues concerning a cease and desist order. For example, the provisions of and the amendments to §215.31 address cease and desist orders by the Board and §215.41 allows a hearing officer to rule upon motions.

Amendments to §215.307, Notice of Hearing, clarify that the department, rather than the Board, issues and serves a notice of hearing.

Amendments to §215.308, Reply to Notice of Hearing and Default Proceedings, clarify that Chapter 215, Subchapter I, applies in contested cases the department refers to SOAH. Amendments to §215.308(b) require a party that files any reply or responsive pleading in a SOAH docket to also provide a copy to the department. This amendment will ensure that the department receives a copy of pleadings, even in those contested cases to which the department is not a party.

Amendments to §215.309, Recording and Transcriptions of Hearing Cost, identify the department as performing certain functions relating to treatment of transcripts and preparation of an appellate record. The amendments provide executive management and the Board more flexibility regarding waiver of costs of transmitting a record to a court.

Amendments to §215.313, Official Notice of Board Records, delete the term "Board" from the section title. Additional amendments to §215.313 make the provision easier to understand and clarify that the department is the entity responsible for maintaining the agency's records and files. Official notice may be taken of the department's files, not only of the Board's files.

Amendments to §215.314, Cease and Desist Orders, correct capitalization errors. Amendments to §215.314(e) delete the phrase "to the Board" because the person requesting a cease and desist order is not limited to filing the petition or complaint with the Board. For example, it may be appropriate for the petition or complaint to be filed with a Board delegate or SOAH ALJ. If necessary, a hearings examiner may address a cease and desist issue under §215.41.

Amendments to §215.317, Motion for Rehearing, clarify that a motion for rehearing and the associated replies are to be filed with the department, rather than with the Board. The amendments also identify the motion for rehearing authority. For example, a motion for rehearing of a Board order will be decided by the Board. A motion for rehearing of an order issued by a division director authorized directly by law, rather than through delegated authority, will be decided by that division director. A motion for rehearing of an order issued by a hearings examiner in a lemon law or warranty performance contested case matter will be decided by the chief hearings examiner in accordance with the provisions of Occupations Code, §2301.704.

#### COMMENTS

No comments on the proposed amendments were received.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 43 TAC §215.2

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002; Transportation Code, §1002.001, and under Occupations Code, §2301.153 and §2301.155, which provide the Board

of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; under Occupations Code, §2301.602, which authorizes the Board to adopt rules for the enforcement and implementation of Occupations Code, Chapter 2301, Subchapter M; under Occupations Code, §2301.703, which authorizes the department to establish rules regarding mediation requirements in contested cases under Transportation Code, Chapter 503, or under Occupations Code, Chapter 2301; and under Occupations Code, §2301.713, which authorizes the Board to establish rules regarding procedures to allow a party to a contested case to file motions for rehearing.

##### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 55; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

**43 TAC §§215.21, 215.22, 215.26 - 215.28, 215.30 - 215.32, 215.34, 215.35, 215.37, 215.39, 215.41, 215.43, 215.44, 215.49, 215.51 - 215.53, 215.55, 215.56**

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002; Transportation Code, §1002.001, and under Occupations Code, §2301.153 and §2301.155, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; under Occupations Code, §2301.602, which authorizes the Board to adopt rules for the enforcement and implementation of Occupations Code, Chapter 2301, Subchapter M; under Occupations Code, §2301.703, which authorizes the department to establish rules regarding mediation requirements in contested cases under Transportation Code, Chapter 503, or under Occupations Code, Chapter 2301; and under Occupations Code, §2301.713, which authorizes the Board to establish rules regarding procedures to allow a party to a contested case to file motions for rehearing.

##### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 55; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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## SUBCHAPTER C. LICENSES, GENERALLY

### 43 TAC §215.83, §215.86

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002; Transportation Code, §1002.001, and under Occupations Code, §2301.153 and §2301.155, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; under Occupations Code, §2301.602, which authorizes the Board to adopt rules for the enforcement and implementation of Occupations Code, Chapter 2301, Subchapter M; under Occupations Code, §2301.703, which authorizes the department to establish rules regarding mediation requirements in contested cases under Transportation Code, Chapter 503, or under Occupations Code, Chapter 2301; and under Occupations Code, §2301.713, which authorizes the Board to establish rules regarding procedures to allow a party to a contested case to file motions for rehearing.

#### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 55; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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## SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

### 43 TAC §215.119

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002; Transportation Code, §1002.001, and under Occupa-

tions Code, §2301.153 and §2301.155, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; under Occupations Code, §2301.602, which authorizes the Board to adopt rules for the enforcement and implementation of Occupations Code, Chapter 2301, Subchapter M; under Occupations Code, §2301.703, which authorizes the department to establish rules regarding mediation requirements in contested cases under Transportation Code, Chapter 503, or under Occupations Code, Chapter 2301; and under Occupations Code, §2301.713, which authorizes the Board to establish rules regarding procedures to allow a party to a contested case to file motions for rehearing.

#### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 55; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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## SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

### 43 TAC §§215.201, 215.202, 215.205 - 215.207, 215.209

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002; Transportation Code, §1002.001, and under Occupations Code, §2301.153 and §2301.155, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; under Occupations Code, §2301.602, which authorizes the Board to adopt rules for the enforcement and implementation of Occupations Code, Chapter 2301, Subchapter M; under Occupations Code, §2301.703, which authorizes the department to establish rules regarding mediation requirements in contested cases under Transportation Code, Chapter 503, or under Occupations Code, Chapter 2301; and under Occupations Code, §2301.713, which authorizes the Board to establish rules regarding procedures to allow a party to a contested case to file motions for rehearing.

#### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 55; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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## SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**43 TAC §§215.301, 215.305 - 215.309, 215.313, 215.314,  
215.317**

### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §503.002; Transportation Code, §1002.001, and under Occupations Code, §2301.153 and §2301.155, which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; under Occupations Code, §2301.602, which authorizes the Board to adopt rules for the enforcement and implementation of Occupations Code, Chapter 2301, Subchapter M; under Occupations Code, §2301.703, which authorizes the department to establish rules regarding mediation requirements in contested cases under Transportation Code, Chapter 503, or under Occupations Code, Chapter 2301; and under Occupations Code, §2301.713, which authorizes the Board to establish rules regarding procedures to allow a party to a contested case to file motions for rehearing.

### CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 55; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

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## CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) adopts amendments to §218.15, Payment of Fees, and §218.42, Fees, without changes to the proposed text as published in the Decem-

ber 20, 2013, issue of the *Texas Register* (38 TexReg 9231). The amended rules will not be republished.

### EXPLANATION OF ADOPTED AMENDMENTS

The purpose of the amendments is for the department to standardize fee rules to reflect standard transaction fees resulting from department customers' use of credit cards and Automated Clearing House (ACH) transactions to pay for department fees and to clarify or update other department rules concerning fees. The rule revisions will subject all credit card and ACH transactions to the standard fees charged by whatever third-party entity processes these transactions. Most department transactions will be handled through the Texas Department of Information Resources' (DIR) Texas.gov system. Under Government Code, §2054.113, state agencies may not duplicate an infrastructure component of DIR's Texas.gov system unless they have an exemption under DIR's statute. The fees for use of DIR's Texas.gov system for online transactions are set pursuant to Government Code, §2054.2591. The department will not charge or receive any fees in addition to those charged by the third-party transaction processors.

Existing §218.15(1) and §218.42(b)(2)(A) require department approval of credit cards used to pay fees and set a service charge for use of a credit card to pay fees. These sections are amended to remove the references to payment methods and instead refer all payment issues to §209.23 of this title (relating to Methods of Payment). These amendments are necessary because the current rules are incomplete with respect to debit cards and duplicative with respect to credit cards. Existing §209.23(a)(1) - (4) authorizes payment of department fees 1) with a valid credit or debit card issued by a financial institution chartered by a state or the United States, or a nationally recognized credit organization; 2) by electronic funds transfer; 3) with a personal check, business check, cashier's check or money order; or 4) by cash in person. Simultaneous amendments to §209.23(a)(1) add a requirement that the department approve credit or debit cards used to pay fees. Simultaneous amendments to §209.23(a)(3) also disapprove of personal or business checks as methods of payment for 72 or 144 hour permits. Simultaneous amendments to §209.23(a)(5) add pre-payment of certain department fees by escrow accounts, already authorized by the Transportation Code, as an approved method to pay these fees. See Texas Transportation Code at §§502.093 (annual permits), 502.094 (72 or 144 hour permits), 502.095 (one-trip or 30-day trip permits), 623.096 (manufactured or industrialized housing), 643.004 (credentialing/operating authority for motor carriers), and 645.002 (Unified Carrier Registration).

### CHANGES IN CREDIT CARD CHARGES

Existing §209.23(b) requires that persons paying department fees "by credit card, debit card, or electronic funds transfer will pay the amount of the service charge per transaction along with the applicable fee." Simultaneous amendment to §209.23(b) establishes that the service charge for all department credit card and ACH transactions will be charged whatever service fee is applied by the third-party transaction processor, which in most cases will be the standard DIR Texas.gov system fee, set pursuant to Government Code, §2054.2591. Amending §§209.2, 209.23, 218.15, 218.42, and 219.11(f) to require payment of service fees is a necessity because the current sections set reimbursements to the department for fees paid by credit card below the actual cost of processing those transactions. The payment of these transaction fees results in an annual loss to the department of \$1,330,000. ACH fees which are currently

\$.25 are paid by the department, but are expected to rise to \$3 per transaction and would result in an increase in agency costs of approximately \$55,000. Pass-through of the applicable processing fees will eliminate this loss. The department will continue charging the current service charge until these amendments become effective and the department implements any new service charge for the particular transaction.

#### COMMENTS

No comments on the proposed amendments were received.

### SUBCHAPTER B. MOTOR CARRIER REGISTRATION

#### 43 TAC §218.15

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the department with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §1001.009, which authorizes the board to adopt rules regarding the collection of fees for department goods and services, including authorizing a service charge for a credit card payment in addition to the fee; Transportation Code, §643.004, which authorizes the board to adopt rules on the methods of payment of fees for commercial motor carrier registrations, and authorizes requiring the payment of fees for use of a credit card to make such payments; Transportation Code, §645.002, which authorizes the board to adopt rules regarding methods of payment for fees for filing proof of insurance for commercial vehicles, including the authority to require payment of a fee for use of a credit card to make such payments; and Transportation Code, §646.003(d), which authorizes the board to adopt rules regarding methods of payment for motor transportation broker fees, including authority to require the payment of a fee for use of credit cards to make such payments.

##### CROSS REFERENCE TO STATUTE

Government Code, §2054.2591 and Transportation Code, Chapters 501, 502, 643, 645, and 646.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2014.

TRD-201400790

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: March 12, 2014

Proposal publication date: December 20, 2013

For further information, please call: (512) 467-3853



### SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

#### 43 TAC §218.42

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the department with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §1001.009, which authorizes the board to adopt rules regarding the collection of fees for department goods and services, including authorizing a service charge for a credit card payment in addition to the fee; Transportation Code, §643.004, which authorizes the board to adopt rules on the methods of payment of fees for commercial motor carrier registrations, and authorizes requiring the payment of fees for use of a credit card to make such payments; Transportation Code, §645.002, which authorizes the board to adopt rules regarding methods of payment for fees for filing proof of insurance for commercial vehicles, including the authority to require payment of a fee for use of a credit card to make such payments; and Transportation Code, §646.003(d), which authorizes the board to adopt rules regarding methods of payment for motor transportation broker fees, including authority to require the payment of a fee for use of credit cards to make such payments.

##### CROSS REFERENCE TO STATUTE

Government Code, §2054.2591 and Transportation Code, Chapters 501, 502, 643, 645, and 646.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2014.

TRD-201400791

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: March 12, 2014

Proposal publication date: December 20, 2013

For further information, please call: (512) 467-3853



### CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS SUBCHAPTER B. GENERAL PERMITS

#### 43 TAC §219.11

The Texas Department of Motor Vehicles (department) adopts amendments to §219.11, General Oversize/Overweight Permit Requirements and Procedures, without changes to the proposed text as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9233). The amended rule will not be re-published.

##### EXPLANATION OF ADOPTED AMENDMENTS

The purpose of the amendments is for the department to standardize fee rules to reflect standard transaction fees resulting from department customers' use of credit cards and Automated Clearing House (ACH) transactions to pay for Oversize/Overweight (OS/OW) permit fees and to coordinate these rules with simultaneous amendments to other department rules concerning

fees. The rule revisions will subject all credit card and ACH transactions to the standard fees charged by whatever third-party entity processes these transactions. Most department transactions will be handled through the Texas Department of Information Resources' (DIR) Texas.gov system. Under Government Code, §2054.113, state agencies may not duplicate an infrastructure component of DIR's Texas.gov system unless they have an exemption under DIR's statute. The fees for use of DIR's Texas.gov system for online transactions are set pursuant to Government Code, §2054.2591. The department will not charge or receive any fees in addition to those charged by the third-party transaction processors.

Section 219.11(f)(1) is amended to remove references to fee amounts attaching to credit card use to pay for OS/OW permit fees and instead refer generally to the fee requirements of §209.23(a) of this title (relating to Methods of Payment); to remove the reference to the fee amount for Permit Account Cards (PAC), a type of escrow account, as an approved method to pre-pay OS/OW vehicle permit fees; to remove references to check, money orders and other forms of payment for such permits; and to update the reference to the deposit of escrow account administrative fees. Existing §209.23(a)(1) - (4) authorizes payment of department fees 1) with a valid credit or debit card issued by a financial institution chartered by a state or the United States, or a nationally recognized credit organization; 2) by electronic funds transfer; 3) with a personal check, business check, cashier's check or money order; or 4) by cash in person. Simultaneous amendments to §209.23(a)(1) add a requirement that the department approve credit or debit cards used to pay fees. Existing §§218.15(1), 218.42(b)(2)(A), and 219.11(f)(1)(A) already require department approval of credit cards used to pay fees. These sections are simultaneously being amended because they are incomplete with respect to debit cards and duplicative with respect to credit cards. Simultaneous amendments to §209.23(a)(3) also disapprove of personal or business checks as methods of payment for 72 or 144 hour permits. Simultaneous amendments to §209.23(a)(5) add pre-payment of certain department fees by escrow accounts, already authorized by the Transportation Code, as an approved method to pay these fees. See Texas Transportation Code at §621.351 (oversize or overweight permits) and §623.096 (manufactured or industrialized housing). Simultaneous amendments to §209.23(a)(5) also add a reference to the use of PAC as anticipated by the amendment to §219.11(f)(1)(A).

#### CHANGES IN CREDIT CARD CHARGES

Existing §209.23(b) requires that persons paying department fees "by credit card, debit card, or electronic funds transfer will pay the amount of the service charge per transaction along with the applicable fee." Simultaneous amendment to §209.23(b) establishes that the service charge for all department credit card and ACH transactions will be whatever service fee is applied by the third-party transaction processor, which in most cases will be the standard DIR Texas.gov system fee, set pursuant to Government Code, §2054.2591. Amending §§209.2, 209.23, 218.13, 218.42, and 219.11(f) to require payment of service fees is a necessity because the current sections set reimbursements to the department for fees paid by credit card below the actual cost of processing those transactions. The payment of these

transaction fees results in an annual loss to the department of \$1,330,000. ACH fees which are currently \$.25 are paid by the department, but are expected to rise to \$3 per transaction and would result in an increase in agency costs of approximately \$55,000. Pass-through of the applicable processing fees will eliminate this loss. Existing §219.11(f) is amended to reflect that the applicable transaction charges will apply. The department will continue charging the current service charge until these amendments become effective and the department implements any new service charge for the particular transaction.

#### COMMENTS

No comments on the proposed amendments were received.

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the department with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §1001.009, which authorizes the board to adopt rules regarding the collection of fees for department goods and services, including authorizing a service charge for a credit card payment in addition to the fee; Transportation Code, §621.356, which authorizes the board to adopt rules prescribing methods of payment for fees for oversize/overweight permits; Transportation Code, §623.076, which authorizes the board to adopt rules to accept credit cards for payment of oversize/overweight permits, and allows the department to require the payment of a service charge for use of credit cards; Transportation Code, §643.004, which authorizes the board to adopt rules on the methods of payment of fees for commercial motor carrier registrations, and authorizes requiring the payment of fees for use of a credit card to make such payments; and Transportation Code, §645.002, which authorizes the board to adopt rules regarding methods of payment for fees for filing proof of insurance for commercial vehicles, including the authority to require payment of a fee for use of a credit card to make such payments.

#### CROSS REFERENCE TO STATUTE

Government Code, §2054.2591 and Transportation Code, Chapters 501, 502, 621, and 623.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 20, 2014.

TRD-201400792

David D. Duncan

General Counsel

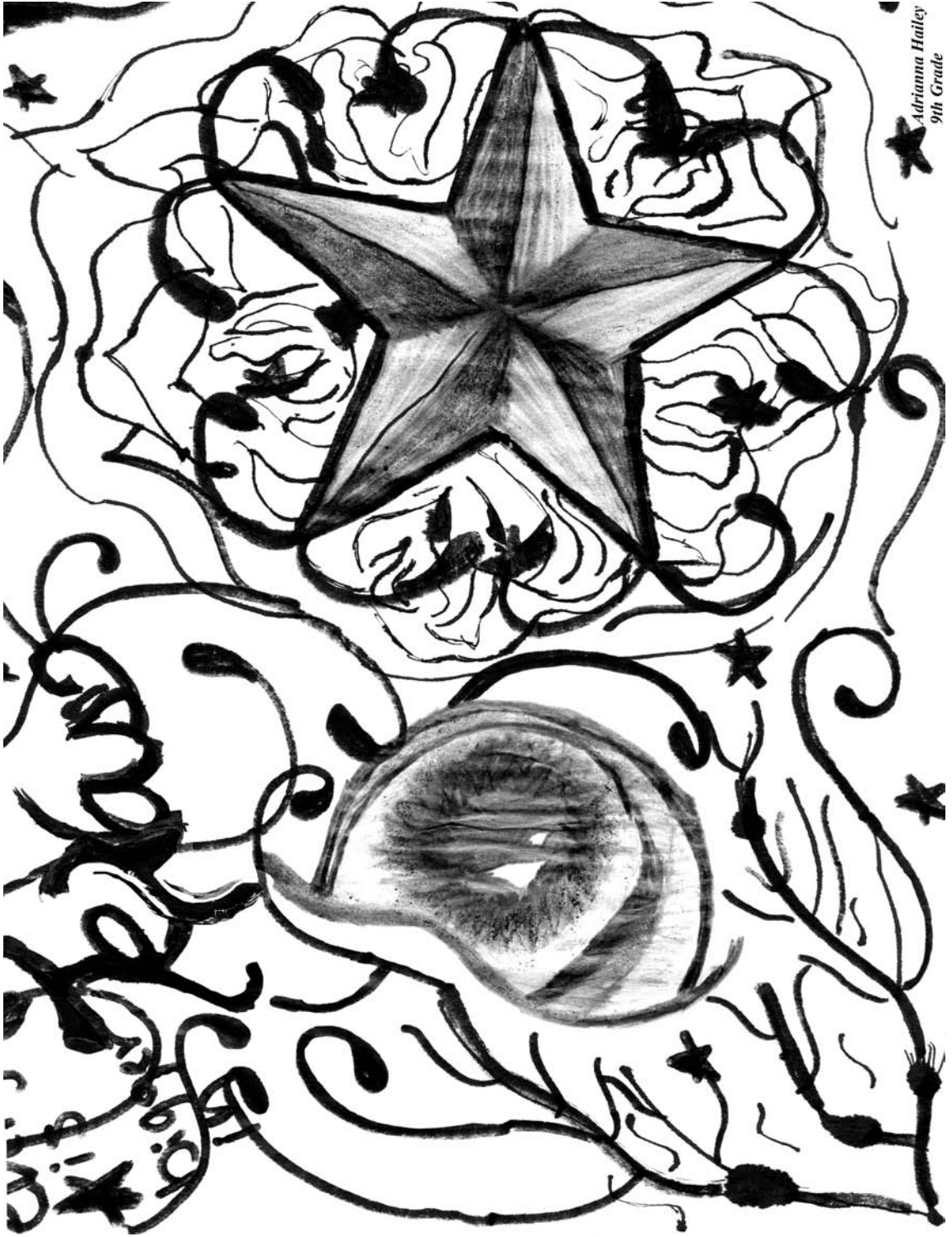
Texas Department of Motor Vehicles

Effective date: March 12, 2014

Proposal publication date: December 20, 2013

For further information, please call: (512) 467-3853

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Adrianna Halley  
9th Grade

# 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 Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 89, Adaptations for Special Populations, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 89 are organized under the following subchapters: Subchapter A, Gifted/Talented Education; Subchapter C, Texas Certificate of High School Equivalency; and Subchapter D, Special Education Services and Settings.

The rules in Subchapter B, Adult Basic and Secondary Education, are not subject to rule review since the rules will be repealed due to Senate Bill 307, 83rd Texas Legislature, Regular Session, 2013, which transferred all functions, duties, appropriations, and responsibilities for state and federal adult education and literacy programs from the Texas Education Agency to the Texas Workforce Commission.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 89, Subchapters A, C, and D, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337.

TRD-201400795

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: February 21, 2014



Texas Real Estate Commission

### Title 22, Part 23

The Texas Real Estate Commission (TREC) files this notice of intention to review 22 TAC Chapter 535, concerning General Provisions; and Chapter 541, concerning Rules Relating to the Provisions of Texas Occupations Code, Chapter 53. This review is undertaken pursuant to Texas Government Code, §2001.039.

TREC will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting

the sections under review continue to exist. Final consideration of this rule review is expected at the TREC meeting in August 2014. Any questions or comments pertaining to this notice of intention to review should be directed to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or e-mailed to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov).

During the review process, TREC may determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether a rule reflects current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

TRD-201400797

Kerri Lewis  
General Counsel  
Texas Real Estate Commission  
Filed: February 21, 2014



## Adopted Rule Reviews

Texas Department of Banking

### Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 33 (Money Services Businesses), in its entirety, specifically §§33.3, 33.7, 33.13, 33.15, 33.23, 33.27, 33.31, 33.33, 33.35, 33.37, 33.51 and 33.53.

Notice of the review of Chapter 33 was published in the January 17, 2014, issue of the *Texas Register* (39 TexReg 305). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 33 in accordance with the requirements of the Government Code, §2001.039.

TRD-201400828

A. Kaylene Ray  
General Counsel  
Texas Department of Banking  
Filed: February 24, 2014

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Office of Consumer Credit Commissioner

**Title 7, Part 5**

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops, which contains Division 1, concerning General Provisions (§§85.101 - 85.104); Division 2, concerning Pawnshop License (§§85.201 - 85.212); Division 3, concerning Pawnshop Employee License (§§85.301 - 85.308); Division 4, concerning Operation of Pawnshops (§§85.401 - 85.408 and 85.410 - 85.423); Division 5, concerning Inspections and Examination (§§85.501 - 85.503); Division 6, concerning License Revocation, Suspension, and Surrender (§§85.601 - 85.608); and Division 7, concerning Enforcement; Penalties (§§85.701 - 85.703). The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 85, Subchapter A was published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7735). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC Chapter 85, Subchapter A, which are published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 85, Subchapter A, the commission finds that the reasons for initially adopting these rules continue to exist and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 5, Chapter 85, Subchapter A.

TRD-201400798

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 21, 2014

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Credit Union Department

**Title 7, Part 6**

The Credit Union Commission (Commission) has completed its review of 7 TAC §93.101 (Scope; Definitions; Severability), §93.201 (Party Status), §93.202 (Computation of Time), §93.203 (Ex Parte Communications), §93.204 (Contested Case Hearing; Informal Disposition), §93.205 (Notice of Hearing), §93.206 (Default), §93.207 (Service of Documents on Parties), §93.208 (Delegation of Authority), §93.209 (Subpoenas), §93.210 (Discovery; Protective Orders; Motions to Compel), §93.211 (Administrative Record), §93.212 (Proposal for Decision), §93.213 (Appearances and Representation), §93.214 (Recovery of Department Costs), §93.301 (Finality of Decision; Request for SOAH Hearing; Waiver of Appeal), §93.302 (Referral to ADR), §93.303 (Hearings on Applications), §93.305 (Appeals of All Other Applications for Which No Specific Procedure is Provided by this Title), §93.401 (Appeals of Cease and Desist Orders and Orders of Removal), §93.402 (Stays), §93.501 (Appeals of Orders of

Conservation), §93.502 (Retention of Attorney), §93.601 (Appeal to the Commission), §93.602 (Decision by the Commission), §93.603 (Oral Arguments Before the Commission), §93.604 (Motion for Rehearing), and §93.605 (Final Decisions and Appeals) as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8685). The Commission readopts these rules.

The rules were reviewed as a result of the Credit Union Department (Department's) general rule review.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§93.101, 93.201 - 93.214, 93.301 - 93.303, 93.305, 93.401, 93.402, 93.501, 93.502, and 93.601 - 93.605 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

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

TRD-201400822

Harold E. Feeney

Commissioner

Credit Union Department

Filed: February 24, 2014

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Finance Commission of Texas

**Title 7, Part 1**

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed its review of Texas Administrative Code, Title 7, Chapter 3 (State Bank Regulation), in its entirety, specifically:

Subchapter A (Securities Activities and Subsidiaries) comprised of §§3.1 - 3.5; Subchapter B (General) comprised of §§3.21, 3.22, and 3.34 - 3.38; Subchapter C (Foreign Bank Branches, Agencies and Representative Offices) comprised of §§3.40 - 3.45; Subchapter D (Pledge and Maintenance of Assets by Foreign Bank Licensed to Maintain Texas State Branch or Agency) comprised of §§3.51 - 3.62; Subchapter E (Banking House and Other Facilities) comprised of §§3.91 - 3.93; and Subchapter F (Access to Information) comprised of §3.111 and §3.112.

Notice of the review of Chapter 3 was published in the January 17, 2014, issue of the *Texas Register* (39 TexReg 305). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 3 in accordance with the requirements of the Government Code, §2001.039.

TRD-201400827

A. Kaylene Ray

General Counsel, Texas Department of Banking

Finance Commission of Texas

Filed: February 24, 2014



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Form A  
Conditional Qualification Letter

Date:

**[Prospective Applicant]**

**Residential Mortgage Loan Originator:**

License Number: \_\_\_\_\_

**Prospective Applicant:**

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

**Loan** (describe as follows):

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Residential mortgage loan originator \_\_\_ has \_\_\_ has not received a signed application for the Loan from the prospective applicant

Residential mortgage loan originator \_\_\_ has \_\_\_ has not reviewed the prospective applicant's credit report

Residential mortgage loan originator \_\_\_ has \_\_\_ has not reviewed the prospective applicant's credit score

Residential mortgage loan originator has reviewed the following additional items (list):

The prospective applicant has provided the residential mortgage loan originator \_\_\_ verbally \_\_\_ in writing with information about the prospective applicant:

Income \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Available cash for down payment and payment of closing costs \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable [for down payment and payment of closing costs]

Debts \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Assets \_\_\_ Yes \_\_\_ No \_\_\_ Not applicable

Based on the information that the prospective applicant has provided to the residential mortgage loan originator as described above, the residential mortgage loan originator has determined that the prospective applicant is eligible and qualified to meet the financial requirements of the loan.

**This is not an approval for the Loan.** Approval of the Loan requires: (1) the residential mortgage loan originator to verify the information that the prospective applicant has provided; (2) the prospective applicant's financial status and credit report to remain substantially the same until the loan closes; (3) the collateral for the loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance); (4) the loan, as described, to remain available in the market; (5) the prospective applicant to execute loan documents the lender requires, and (6) the following additional items (list):

\_\_\_\_\_  
Residential Mortgage Loan Originator

**Form B**  
Conditional Approval Letter

**Date:** \_\_\_\_\_

**[Applicant:]**

**Residential Mortgage Loan Originator:** ~~[Residential mortgage loan originator: License Number~~

~~\_\_\_\_\_]~~  
License Number: \_\_\_\_\_

**Applicant:**

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

**Loan (describe as follows):**

Loan Amount: \_\_\_\_\_

Interest Rate: \_\_\_\_\_

Interest Rate Lock Expires (if applicable): \_\_\_\_\_

Maximum Loan-to-Value Ratio: \_\_\_\_\_

Loan Type and Program: \_\_\_\_\_

Secondary financing terms (if applicable): \_\_\_\_\_

Optional Information: Points: Origination: \_\_\_\_\_ Discount: \_\_\_\_\_

Commitment: \_\_\_\_\_ Other (describe): \_\_\_\_\_

**Subject Property:**

Residential mortgage loan originator[:] has received a signed application from the applicant.

Residential mortgage loan originator[:] has:

Reviewed applicant's credit report and credit score \_\_\_\_ Yes \_\_\_\_ Not applicable [~~credit report and credit score~~]

Verified applicant's income \_\_\_\_ Yes \_\_\_\_ Not applicable [~~income~~]

Verified applicant's available cash for down payment and closing costs \_\_\_\_ Yes \_\_\_\_ Not applicable [~~available cash for down payment and closing costs~~]

Reviewed applicant's debts and other assets \_\_\_\_ Yes \_\_\_\_ Not applicable [~~debts and other assets~~]

Applicant is approved for the loan provided that the applicant's creditworthiness and financial position do not materially change prior to closing and provided that:

1. The subject property is appraised for an amount not less than \$\_\_\_\_\_;
2. The lender does not object to encumbrances to title shown in the title commitment or survey;
3. The subject property's condition meets lender's requirements;
4. The subject property is insured in accordance with lender's requirements;
5. The applicant executes the loan documents lender requires; and
6. The following additional conditions are complied with (list):

This conditional approval expires on \_\_\_\_\_.

\_\_\_\_\_  
Residential Mortgage Loan Originator [:]

Figure 2: 7 TAC §85.405(a)(1)(A)

We have made you a loan of the Amount Financed that is secured by the pledged goods you have deposited with us as listed on the front of this ticket. You do not have to pay this loan. If you want to recover the pledged goods you must pay us the Amount Financed plus the Finance Charges we have earned and present a proper form of identification. If the Finance Charge shown on the front is \$15 or less, we earn all the Finance Charge when the loan is made. If the Finance Charge is greater than \$15 and you pay the loan in full or renew it before the Date Due, we will reduce the Finance Charge by 1/30th for each day from the day you pay or renew the loan to the Date Due, but the Finance Charge will never be reduced below \$15. The Total of Payments is the amount you owe on the Date Due. If you pay the loan after the Date Due, we will add 1/30th of the Finance Charge for each day from the Date Due until the date you pay. If you do not pay the loan on or before the Last Day of Grace your pledged goods may become our property if we so choose. If your pledged goods become our property we may sell it to you or any other person at a price determined by us and the buyer must pay sales tax. IF YOU NEED ADDITIONAL TIME TO PAY YOUR LOAN, YOU MUST GET OUR AGREEMENT IN WRITING. VERBAL AGREEMENTS FOR ADDITIONAL TIME ARE NOT BINDING. You have certain rights to extend or pay this loan by mail. If you redeem by mail, you must pay us the amount due on the loan plus reasonable and necessary expenses of packaging and shipping and the expense of insuring the goods in an amount specified by you. Payment for mail transactions may be required to be made by cashier's or certified check or money order.

If you pay the loan we will return the property to you in the same condition we received it. If we lose your property or if it is damaged while in our possession, we will replace it with identical or similar property of the same kind and quality or have your property restored to its condition at the time you deposited it with us. All replacements are subject to approval by the Consumer Credit Commissioner. Any person who possesses this pawn ticket may pay us the amount due and we must give that person the pledged goods if we have not been notified in writing that this ticket has been lost or stolen. IF THIS TICKET IS LOST OR STOLEN, YOU MUST NOTIFY US IN WRITING TO PROTECT YOUR PLEDGED GOODS. Fee for lost ticket and statement: \$1.00.

I authorize \_\_\_\_\_, ID type and number \_\_\_\_\_, to renew or extend this loan in my name.

TEXAS PAWNBROKERS ARE LICENSED AND REGULATED BY THE TEXAS CONSUMER CREDIT COMMISSIONER.  
FOR INFORMATION OR ASSISTANCE WITH ANY PAWN OR OTHER CREDIT PROBLEM CALL 1-800-538-1579.  
**NOTICE: SEE REVERSE SIDE**

NO GOODS SENT  
C.O.D. NO GOODS  
SHOWN FOR  
REDEMPTION  
UNTIL PAID

If redeeming by person other than original pledgor. Name _____ ID type and number _____
---

NO PERSONAL  
CHECKS OR  
CREDIT CARDS  
ACCEPTED FOR  
PAYMENT

Figure: 7 TAC §85.407(a)(1)

**MEMORANDUM OF EXTENSION**

Date \_\_\_\_\_

Pawn Ticket No. \_\_\_\_\_

( Name, address, and telephone number of pawnshop here )

- 1. Finance Charge (Pawn Service Charge) Paid Today \$ \_\_\_\_\_
- 2. Daily Amount of Finance Charge (Pawn Service Charge) \$ \_\_\_\_\_
- 3. Finance Charge (Pawn Service Charge) Paid to (Date) \_\_\_\_\_
- 4. New Maturity Date \_\_\_\_\_
- 5. New Last Day of Grace \_\_\_\_\_

**AMOUNT DUE AT REDEMPTION:**

- a. Amount Financed (shown on pawn ticket) \$ \_\_\_\_\_
- PLUS**
- b. Finance Charge: \_\_\_\_\_ X \_\_\_\_\_ = \$ \_\_\_\_\_  
(No. of days from date in Line 3 to date paid) (Daily Amount in Line 2)
- c. Total Amount Due (Line a amount + Line b amount) \$ \_\_\_\_\_

**YOU ARE NOT OBLIGATED TO PAY THIS PAWN TRANSACTION. HOWEVER, TO PREVENT LOSS OF YOUR GOODS DUE TO NONPAYMENT, YOU MUST EXTEND OR RENEW YOUR PAWN TRANSACTION OR PAY YOUR PAWN TRANSACTION IN FULL ON OR BEFORE THE LAST DAY OF GRACE.**

**KEEP THIS MEMORANDUM WITH YOUR PAWN TICKET. BRING YOUR PAWN TICKET TO REDEEM YOUR PLEDGED GOODS.**

Figure: 7 TAC §85.407(a)(2)

Name of Pawnshop _____	Pawn Ticket No. _____
Address _____	Date Prepared _____
City _____ State _____ Zip Code _____	New Maturity Date _____
	New Last Day of Grace _____

## MEMORADUM OF EXTENSION

<div style="background-color: #333; color: white; padding: 5px; text-align: center;"> <b>Finance Charge</b>  <i>Pawn Service Charges are the same as Finance Charges for the purposes of this form.</i> </div> <table style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 60%;">1. Amount of Finance Charge Paid Today</td> <td style="width: 5%;">\$</td> <td style="width: 35%;">_____</td> </tr> <tr> <td>2. Daily Amount of Finance Charge</td> <td>\$</td> <td>_____</td> </tr> <tr> <td>3. Finance Charge Paid to</td> <td></td> <td>_____</td> </tr> </table> <p style="text-align: right; margin-top: 5px;">Enter Date _____</p>	1. Amount of Finance Charge Paid Today	\$	_____	2. Daily Amount of Finance Charge	\$	_____	3. Finance Charge Paid to		_____	<ol style="list-style-type: none"> <li>1. You are not obligated to pay this pawn transaction.</li> <li>2. However, to prevent loss of your goods, due to nonpayment, you must extend or renew your transaction, or pay your pawn transaction in full before the last day of grace.</li> <li>3. Bring your pawn ticket - and this memorandum - to redeem your pledged goods</li> </ol> <p style="margin-top: 10px;">Keep a copy of this memorandum with your pawn ticket.</p>
1. Amount of Finance Charge Paid Today	\$	_____								
2. Daily Amount of Finance Charge	\$	_____								
3. Finance Charge Paid to		_____								

## ACCEPTANCE OF GOODS MODEL POLICY

The *Texas Pawnshop Act* requires that the pawnbroker monitor goods purchased, accepted in pawn, or goods otherwise acquired in order to identify and prohibit transactions involving stolen goods.

This pawnshop will not accept for pledge or otherwise acquire any item that is stolen or has the appearance of not belonging to the person offering such item for pledge or purchase.

Each employee of this pawnshop will not accept for pledge or otherwise acquire:

1. Any item on which the serial number has been defaced, altered, or removed;
2. Any item that is marked in a manner that suggests or indicates ownership by a:
  - a. Rental company;
  - b. Motel;
  - c. Training school;
  - d. Construction company;
  - e. Governmental body; or
  - f. Any person or firm other than the person offering the item.
3. Any item of new merchandise (an item that has not been used by anyone else previously for its intended purpose). Two exceptions are permissible:
  - a. Receipt or proof of ownership. The seller or pledgor of the offered item produces a valid receipt or other evidence of ownership or purchase of the item.
  - b. No receipt with written statement. The seller or pledgor of the offered item provides a signed and dated written statement including a description of how the seller or pledgor came into possession of the item (e.g., Christmas gift) and that the seller or pledgor does not have a receipt.In each case, a copy of the receipt, document evidencing ownership, or written statement must be attached to and retained with the item or filed in this pawnshop's numerical pawn ticket file (pawn ticket) or purchase ticket file.

Each employee of this pawnshop will require, at a minimum, one of the following forms of identification as a prerequisite to any pawn transaction or purchase:

1. A state-issued driver's license;
2. A state-issued identification card;
3. A passport;
4. A valid military identification;
5. A certificate of identification from the Mexican Consulate, certificado de matricula consular; or
6. An identification issued by the agency of the United States responsible for citizenship and immigration.

The form of identification must contain a photograph of the pledgor or seller. Each employee's best effort must be used to determine that the identification used is genuine and unaltered and that the identification presented properly identifies the pledgor or seller.

Used or secondhand personal property may not be purchased from a person other than another pawnbroker unless a record is established that contains:

- a. The name, address, and physical description of the seller;
- b. Either the driver's license number, military identification number, identification certificate number, or other official number capable of identifying the seller;
- c. A complete description of the property including the serial number if reasonably available or other identifying characteristics; and
- d. A signed document from the seller stating that the seller has the right to sell the property.

No employee may accept as pledged goods building construction materials including copper pipes, tubing and wiring, aluminum wire, plumbing supplies, electrical supplies, window glass, lumber, or other similar materials unless a record is established that contains the information authorizing the purchase of used or secondhand personal property as discussed above.

This pawnshop will not accept stolen items for pledge or purchase. Each employee should use the best judgment possible when evaluating the pledgor or seller of goods to determine that the person is the rightful owner of the goods. If an employee doubts the rightful ownership or authority of the person offering goods for pledge or purchase, the transaction should not be made. Each employee is instructed to observe the actions of the person offering the goods. It is important to pay attention to the value of the item being offered as compared to the price requested and any other circumstances of the offeror that might relate to the validity of the transaction.

**AGAIN, THIS PAWNSHOP DOES NOT ACCEPT FOR PLEDGE OR PURCHASE ANY ITEM THAT IS STOLEN OR HAS THE APPEARANCE OF BEING STOLEN.**

The undersigned employee acknowledges receipt of this policy and understands full compliance with the terms of this policy is a condition of continued employment.

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Signed

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Printed Name

---

Date

Figure: 34 TAC §2.104(l)

Reduction to Fund Available for Disbursement based on Lower Attendance

Percent Lower*	Fund Reduction
15 - 25%	- 15%
25 - 35%	- 25%
35% +	- 35%

\*Percentage by which actual attendance at event is lower than estimated attendance used to determine incremental increase.

Figure: 34 TAC §2.204(l)

Reduction to Fund Available for Disbursement based on Lower Attendance

Percent Lower*	Fund Reduction
15 - 25%	- 15%
25 - 35%	- 25%
35 - 45%	- 35%
45% +	Actual percentage, up to 80% reduction

\*Percentage by which actual attendance at event is lower than estimated attendance used to determine incremental increase.



# 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.

## Texas Department of Agriculture

### Notice of Texas Equine Incentive Program Fee for 2014 Calendar Year

Texas Administrative Code, Title 4, §17.504(b) (relating to Breeding Report; Program Fee) states that the Texas Department of Agriculture (TDA) will provide annual notice of the program fee to the breed associations and publish notice of same in the *Texas Register*. In accordance with §17.504(b), TDA has set the Texas Equine Incentive Program fee for the 2014 calendar year at the same level as the previous year. The fee will be \$30 per mare bred.

Eligible breed associations and owners of eligible foals may obtain further information by contacting Karen Reichek, Director of Contracts and Grants, P.O. Box 12847, Austin, Texas 78711.

TRD-201400796  
Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Filed: February 21, 2014

## Comptroller of Public Accounts

### Notice of Request for Proposals

Pursuant to Chapter 403, §403.011; Chapter 2155, §2155.001; and Chapter 2156, §2156.121 of the Texas Government Code and Chapter 54, Subchapter F of the Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller") on behalf of the Texas Prepaid Higher Education Tuition Board ("Board") announces its Request for Proposals No. 207j ("RFP") from qualified investment management firms to assist Comptroller and the Board in managing the Non-U.S. Equity Passive Index Securities portion of the assets held by the Texas Guaranteed Tuition Plan as described in the RFP. If approved by the Board, the successful respondent(s), if any, will be expected to begin performance of the contract on or about September 1, 2014.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, March 7, 2014, after 10:00 a.m., Central Time ("CT"). Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, March 21, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. On or about Friday, April 4, 2014, Comptroller expects to post responses to questions on the ESBD as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, April 21, 2014. Proposals received in the Issuing Office after this time and date will not be considered.

Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s). The Board and Comptroller each reserve the right to accept or reject any or all Proposals submitted. The Board and Comptroller are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Board and Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP March 7, 2014, after 10:00 a.m. CT; Questions Due - March 21, 2014, 2:00 p.m. CT; Official Responses to Questions posted - April 4, 2014, or as soon thereafter as practical; Proposals Due - April 21, 2014, 2:00 p.m. CT; Contract Execution - August 1, 2014, or as soon thereafter as practical; and Commencement of Work - on or about September 1, 2014. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Response.

TRD-201400885  
Robin Reilly  
Assistant General Counsel  
Comptroller of Public Accounts  
Filed: February 26, 2014

### Notice of Request for Proposals

Pursuant to Chapter 403, §403.011; Chapter 2155, §2155.001; and Chapter 2156, §2156.121 of the Texas Government Code and Chapter 54, Subchapter F of the Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller") on behalf of the Texas Prepaid Higher Education Tuition Board ("Board") announces its Request for Proposals No. 207k ("RFP") from qualified investment management firms to assist Comptroller and the Board in managing the Inflation Protected Securities portion of the assets held by the Texas Guaranteed Tuition Plan as described in the RFP. If approved by the Board, the successful respondent(s), if any, will be expected to begin performance of the contract on or about September 1, 2014.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, March 7, 2014, after 10:00 a.m., Central Time ("CT"). Parties interested in a hard copy of the RFP should contact Robin Reilly, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 201, Austin, Texas 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All written questions must be received at the above-referenced address no later than 2:00 p.m. CT on Friday, March 21, 2014. Questions received after this time and date will not be considered. Prospective respondents are encouraged to fax or e-mail questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely

receipt. On or about Friday, April 4, 2014, Comptroller expects to post responses to questions on the ESBDB as a RFP Addendum.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Monday, April 21, 2014. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board makes the final decision on award(s). The Board and Comptroller each reserve the right to accept or reject any or all Proposals submitted. The Board and Comptroller are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Board and Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - March 7, 2014, after 10:00 a.m. CT; Questions Due - March 21, 2014, 2:00 p.m. CT; Official Responses to Questions posted - April 4, 2014, or as soon thereafter as practical; Proposals Due - April 21, 2014, 2:00 p.m. CT; Contract Execution - August 1, 2014, or as soon thereafter as practical; and Commencement of Work - on or about September 1, 2014. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBDB as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBDB for updates to the RFP prior to submitting a Response.

TRD-201400886

Robin Reilly

Assistant General Counsel

Comptroller of Public Accounts

Filed: February 26, 2014

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101. Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/03/14 - 03/09/14 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/03/14 - 03/09/14 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009<sup>3</sup> for the period of 02/01/14 - 02/28/14 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 02/01/14 - 02/28/14 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/14 - 06/30/14 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/14 - 06/30/14 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009<sup>4</sup> for the period of 04/01/14 - 06/30/14 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code<sup>1</sup> for the period of 04/01/14 - 06/30/14 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009<sup>4</sup> for the period of 04/01/14 - 06/30/14 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 04/01/14 - 06/30/14 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009<sup>1</sup> for the period of 04/01/14 - 06/30/14 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/14 - 03/31/14 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 03/01/14 - 03/31/14 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

<sup>3</sup> For variable rate commercial transactions only.

<sup>4</sup> Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201400867

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 24, 2014

◆ ◆ ◆  
**Texas Education Agency**

**Correction of Error**

The Texas Education Agency (TEA) adopted new 19 TAC §109.3003, concerning federal fiscal compliance and reporting, in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1150) without changes to the proposal. However, the *Indirect Cost Handbook* which was adopted as Figure: 19 TAC §109.3003(d) did have changes on page 2 and should have been republished.

Due to new information received from the United States Department of Education regarding indirect cost rates, the TEA needs to correct guidance on timelines and submission methods.

On page 2 of 9 in the *Indirect Cost Handbook*, the first two bullets under the section entitled "Current, Approved Indirect Cost Rate" currently read as follows:

- ISDs will upload requested indirect cost schedules and supporting documentation to TEA through the NCLB Reports application in TEASE, due March 14, 2014.
- For open-enrollment charter schools, the SC5010 (due March 31, 2014) will serve as the charter school's request for an indirect cost rate and contain the sending district data used to calculate the indirect cost rate.

These first two bullets should be updated to inform school districts that the TEA is reverting to the existing data collection process due to changes forthcoming at the federal level and to reflect the later submission date for the SC5010 by open-enrollment charter schools. The corrected text reads as follows:

• ISDs will continue to submit the Exhibit J-2: Schedule for the Computation of Indirect Cost Rates (due March 14, 2014) within the ISD's Annual Financial Report to receive their indirect cost rate until further notice.

• For open-enrollment charter schools, the SC5010 (due April 7, 2014) will serve as the charter school's request for an indirect cost rate and contain the sending district data used to calculate the indirect cost rate.

TRD-201400868



### Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Eligibility Document: State Policies and Procedures

Purpose and Scope of the Part B Federal Fiscal Year (FFY) 2014 State Application and its Relation to Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA, Part B). The Texas Education Agency (TEA) is inviting public comment on its 2014 Proposed State Application under IDEA, Part B, in accordance with 34 CFR §300.165. The annual grant application provides assurances that the state's policies and procedures in effect are consistent with the federal requirements to ensure that a free appropriate public education is made available to all children with a disability from 3 to 21 years of age, including children who have been suspended or expelled from school. 34 CFR §300.165 requires that states conduct public hearings, ensure adequate notice of those hearings, and provide an opportunity for public comment, including comment from individuals with disabilities and parents of children with disabilities, before adopting policies and procedures.

Availability of the State Application. The Proposed State Application is available on the TEA website at <http://www.tea.state.tx.us/index2.aspx?id=2147493812>. Instructions for submitting public comments are available from the same site. The Proposed State Application will also be available at the 20 regional education service centers and at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in reviewing the Proposed State Application at the William B. Travis location should contact the TEA Division of Federal and State Education Policy at (512) 463-9414.

Procedures for Submitting Written Comments. The TEA will accept written comments pertaining to the Proposed State Application by mail to the TEA, Division of Federal and State Education Policy, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to [sped@tea.state.tx.us](mailto:sped@tea.state.tx.us).

Participation in Public Hearings. The TEA will provide individuals with opportunities to testify on the Proposed State Application and the state's policies and procedures for implementing IDEA, Part B, on March 25, 2014, and March 27, 2014, between 2 p.m. and 4 p.m. at the TEA (1st floor, Room 1-100), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Parties interested in testifying are encouraged to also include written testimony. Public hearing information is available on the TEA website at <http://www.tea.state.tx.us/index2.aspx?id=2147493812>.

Timetable for Submitting the State Application. After review and consideration of all public comments, the TEA will make necessary or appropriate modifications and will submit the State Application to the U.S. Department of Education on or before May 12, 2014.

For more information, contact the TEA Division of Federal and State Education Policy by mail at 1701 North Congress Avenue, Austin,

Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by email at [sped@tea.state.tx.us](mailto:sped@tea.state.tx.us).

TRD-201400884

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 26, 2014



### Request for Applications Concerning the 2014-2016 Technology Lending Program Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-14-107 from Texas public school districts and open-enrollment charter schools that have (1) at least 40% economically disadvantaged students at the participating campus(es), as determined using the 2012 Snapshot enrollment data from the Public Education Information Management System (<http://ritter.tea.state.tx.us/perfreport/snapshot/2012/index.html>); (2) an approved district Technology Plan on file with the TEA for the 2013-2014 school year; and (3) a Texas Campus School Technology and Readiness (STaR) Chart at the Developing Tech Level of Progress or higher for Teaching and Learning and for Educator Preparation and Development for the 2012-2013 school year for the participating campus(es).

Description. Texas Education Code, §32.201, authorizes the TEA to implement the Technology Lending Program Grant. The Technology Lending Program Grant awards grants to Texas public school districts and open-enrollment charter schools to implement a technology lending program to loan students the equipment necessary to access and use electronic instructional materials. In awarding grants, the TEA will consider the availability of existing equipment to students in the Texas public school district or open-enrollment charter school and other funding available to the Texas public school district or open-enrollment charter school. With the Technology Lending Program Grant, districts can move forward with the implementation of electronic instructional materials while ensuring access for students through loaned equipment for learning at school and at home.

Dates of Project. The 2014-2016 Technology Lending Program Grant will be implemented beginning in the 2014-2015 school year and ending in the 2015-2016 school year. Applicants should plan for a starting date of no earlier than October 1, 2014, and an ending date of no later than August 31, 2016.

Project Amount. Currently, \$10 million is appropriated for the Technology Lending Program Grant. It is anticipated that approximately 130 grants will be awarded ranging in amounts from \$50,000 to \$100,000.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Audrey Hukari, Division of Grants Administration, Texas Education Agency, by email at [Audrey.Hukari@tea.state.tx.us](mailto:Audrey.Hukari@tea.state.tx.us) or by telephone at (512) 463-8525. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, May 13, 2014, to be eligible to be considered for funding.

TRD-201400894

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 26, 2014

## 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 **April 7, 2014**. 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 April 7, 2014**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforce-

ment 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: A TO Z USA OPERATIONS LLC dba Mega Truck Stop; DOCKET NUMBER: 2013-1856-PST-E; IDENTIFIER: RN102059557; LOCATION: Caddo Mills, Hunt 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: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (903) 535-5100.

(2) COMPANY: Alcoa World Alumina LLC; DOCKET NUMBER: 2013-2074-AIR-E; IDENTIFIER: RN100242577; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: alumina refining plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1344, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: \$5,513; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Bexar County; DOCKET NUMBER: 2013-1197-PWS-E; IDENTIFIER: RN101273167; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 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 April 2012; 30 TAC §290.122(c)(2)(A), by failing to post public notification for the failure to collect triggered source monitoring samples for the month of July 2012; and 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the month of December 2012; and failed to provide public notification regarding the failure to conduct repeat sampling for the month of December 2012; PENALTY: \$402; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2013-2048-AIR-E; IDENTIFIER: RN100215615; LOCATION: Orange, Orange County; TYPE OF FACILITY: high density polyethylene manufacturing plant; RULE VIOLATED: 30 TAC §101.201(a)(1) and (b), and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1310, Special Terms and Conditions (STC) Number 2.F., by failing to submit an initial notification into the State of Texas Environmental Electronic Reporting System for a reportable emissions event no later than 24 hours after the discovery of the emissions event; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1310, STC Number 10, and New Source Review Permit Number 19394, Special Conditions Number 1., by failing to prevent unauthorized emissions; PENALTY: \$9,450; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Cinco Natural Resources Corporation; DOCKET NUMBER: 2013-2134-AIR-E; IDENTIFIER: RN106434517; LOCATION: Kenedy, Live Oak County; TYPE OF FACILITY: natural gas treatment plant; RULE VIOLATED: 30 TAC §122.143(4) and

§122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3578/Oil and Gas General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(1) and (2), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), THSC, §382.085(b), and FOP Number O3578/Oil and Gas GOP Number 514, Site-wide Requirements (b)(1) and (2), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: \$4,876; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: City of Buffalo Gap; DOCKET NUMBER: 2013-2097-PWS-E; IDENTIFIER: RN101224798; LOCATION: Buffalo Gap, Taylor County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.115(f)(1) 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 a locational running annual average; PENALTY: \$150; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Laredo; DOCKET NUMBER: 2013-1540-AIR-E; IDENTIFIER: RN102327582; LOCATION: Laredo, Webb County; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2371/General Operating Permit (GOP) Number 517, Site-wide Requirements (SWR) Number (b)(6)(B)(iv)(a), by failing to perform an observation on stationary vents at least once each calendar quarter; 30 TAC §106.492(1)(B) and THSC, §382.085(b), by failing to equip the flare with a continuously burning pilot or other automatic ignition system that assures gas ignition and provides immediate notification to personnel when the ignition system ceases to function; 30 TAC §122.143(4), THSC, §382.085(b), and FOP Number O2371/GOP Number 517, SWR Number (b)(2), by failing to report all instances of deviations; 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to properly maintain complete records; 30 TAC §122.143(4), THSC, §382.085(b), and FOP Number O2371/GOP Number 517, SWR Number (b)(2), by failing to report all instances of deviations; and 30 TAC §106.8(c)(2)(B) and THSC, §382.085(b), by failing to maintain records containing sufficient information to demonstrate compliance; PENALTY: \$36,295; Supplemental Environmental Project offset amount of \$29,036 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: City of O'Brien; DOCKET NUMBER: 2013-1642-MLM-E; IDENTIFIER: RN101386852; LOCATION: O'Brien, Haskell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.43(c)(4), by failing to provide the water storage tank with a water level indicator located at the tank site; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.5 milligrams per liter total chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), (iv), and (vii), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(m)(1)(A), by failing to inspect the ground storage tank and standpipe annually; 30 TAC §290.46(n)(2), by failing to

provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(3), by failing to keep on file to make available for review copies of well completion data for Well Number 1; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(t), by failing to post a legible ownership sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.121(a) and (b), by failing to develop and maintain 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 public water system will use to comply with the monitoring requirements; 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to submit a Disinfectant Level Quarterly Operating Report (DLQOR) and failed to provide public notification regarding failure to collect a routine coliform monitoring; 30 TAC §290.110(e)(4)(A) and (f)(3) and TCEQ Agreed Order Docket Number 2011-1781-PWS-E, Ordering Provision Numbers 2.b.ii. and 2.d., by failing to submit a DLQOR to the executive director by the tenth day of the month following the end of the quarter; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and TCEQ Agreed Order Docket Number 2011-1781-PWS-E, Ordering Provision Numbers 2.a., and 2.b.i., by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample and failed to provide public notification regarding the failure to collect a raw groundwater source sample; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to 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; 30 TAC §290.122(b)(2)(A), by failing to provide public notification regarding the maximum contaminant level exceedance for October 2012; 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; and 30 TAC §290.51(a)(6) and §21.4 and TWC, §5.702, by failing to pay all annual Public Health Service fees and Consolidated Water Quality fees; PENALTY: \$6,194; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Shamrock; DOCKET NUMBER: 2013-2037-MWD-E; IDENTIFIER: RN101609063; LOCATION: Shamrock, Wheeler County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and Texas Pollutant Discharge Elimination System (Permit Number WQ0010279003, Permit Conditions Number 2.g. and Operational Requirements Number 1, by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: \$8,438; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Convenience Store Business Incorporated dba Quick Mart; DOCKET NUMBER: 2013-1958-PST-E; IDENTIFIER: RN101434173; LOCATION: Paris, Lamar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to

provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: \$10,125; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: DEVIL RIVER, INCORPORATED dba Baybright Car Wash; DOCKET NUMBER: 2013-1759-PST-E; IDENTIFIER: RN101826188; LOCATION: League City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: DLUGOSCH IV, LLC; DOCKET NUMBER: 2013-2102-MLM-E; IDENTIFIER: RN106607260; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULE VIOLATED: 30 TAC §285.3(a) and (d)(4)(A), and Texas Health and Safety Code, §366.051(a), by failing to obtain a permit before placing an OSSF into operation; 30 TAC §§285.30(b)(4), 285.31(d) and 285.91(10), by failing to provide the minimum required ten-foot separation distance between the sewer lines and the potable water lines for the four recreational vehicles (RVs); 30 TAC §285.32(a)(5), by failing to provide a two-way cleanout for the mobile homes and RVs within five feet of 90-degree bends; 30 TAC §285.32(b)(1)(B), by failing to provide an inlet flowline of at least three inches higher than the outlet flowline; 30 TAC §285.32(b)(1)(F), by failing to install the septic tank with a twelve-inch drop from the bottom of the outlet pipe to the bottom of the disposal area; 30 TAC §285.33(b)(1)(A)(v), by failing to ensure the bottom of the excavation is level to within one inch per 25 feet or three inches over the entire excavation, whichever is less; 30 TAC §285.32(a)(2), by failing to ensure the pipes from the mobile homes and RVs are water tight; 30 TAC §285.33(b)(1)(D), by failing to ensure the ends of the multiple drainlines are either looped together or capped; 30 TAC §285.32(b)(1)(E), by failing to ensure that tanks exhibiting deflections, leaks, or structural defects are not used; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of sewage into or adjacent to water in the state; PENALTY: \$3,799; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(13) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2013-1988-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit Number O2223, Special Terms and Conditions Number 15, Air Permit Number 4477, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$29,250; Supplemental Environmental Project offset amount of \$11,700 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Nadia Hameed, (713)767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Evve D. Kuykendall; DOCKET NUMBER: 2013-2163-OSS-E; IDENTIFIER: RN106639222; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULE VIOLATED: 30 TAC §285.3(a) and (b)(1) and Texas Health and Safety Code, §366.051(a), by failing to obtain authorization to construct prior to constructing an OSSF; PENALTY:

\$262; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: Greenville Independent School District; DOCKET NUMBER: 2013-1787-PST-E; IDENTIFIER: RN101572741; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: fleet refueling facility; 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: \$2,579; Supplemental Environmental Project offset amount of \$2,064 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Hoa Khuong Bui and Chuong Anh Nguyen; DOCKET NUMBER: 2013-1679-MWD-E; IDENTIFIER: RN102915378; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.64(a) and (b), by failing to obtain authorization for the discharge of wastewater; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Holiday Market, Incorporated dba Busters Stop & Shop; DOCKET NUMBER: 2013-1888-PST-E; IDENTIFIER: RN102048584; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Hudspeth County Water Control and Improvement District Number 1; DOCKET NUMBER: 2013-1902-MWD-E; IDENTIFIER: RN102181849; LOCATION: Sierra Blanca, Hudspeth County; TYPE OF FACILITY: domestic wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013858001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0013858001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports by the 20th day of the following month for the monitoring periods ending April 30, 2013-July 31, 2013; PENALTY: \$5,775; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(19) COMPANY: INVISTA S.a r.l.; DOCKET NUMBER: 2013-1503-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Federal Operating Permit Number O1897, General Terms and Conditions and Special Terms and Conditions Number 12, Air Permit Numbers 1302 and PSDTX1085, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,126; Supplemental Environmental Project offset amount of \$5,250 applied to southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL

OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: INVISTA S.a r.l.; DOCKET NUMBER: 2013-1243-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §§115.121(a)(2), 115.122(a)(2), and 122.143(4), Federal Operating Permit (FOP) Number O1897, Special Terms and Conditions (STC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the volatile organic compound (VOC) control efficiency for the North and South Adiponitrile Boilers; 30 TAC §§122.143(4), 122.144(4), and 122.146(5), FOP Number O1897, General Terms and Conditions (GTC) and STC Number 21, and THSC, §382.085(b), by failing to include the required information in a deviation report; 30 TAC §116.115(c) and §122.143(4), FOP Number O1868, GTC and STC Number 12, Air Permit Number 1790 Special Conditions (SC) Number 12F, and THSC, §382.085(b), by failing to maintain an emissions record which includes calculated emissions of VOC from all storage tanks; 30 TAC §116.115(c) and §122.143(4), FOP Number O1868, GTC and STC Number 12, Air Permit 1790 SC Number 14, and THSC, §382.085(b), by failing to maintain records of throughput for each month and for the year to date of the cyclohexane and methanol feedstock and all other storage tanks containing VOC that are listed on the Maximum Allowable Emission Rates Table; and 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Air Permit Numbers 1302 and PSDTX1085, SC Number 1, FOP Number O1897, GTC and STC Number 21, and THSC, §382.085(b), by failing to comply with the annual allowable emissions rate for the parts degreaser, Emission Point Number PF900; PENALTY: \$51,650; Supplemental Environmental Project offset amount of \$20,660 Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Joy Resources, Incorporated; DOCKET NUMBER: 2013-1785-AIR-E; IDENTIFIER: RN106840887; LOCATION: Liberty County; TYPE OF FACILITY: tank battery; RULE VIOLATED: 30 TAC §101.10(e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an Emissions Inventory for calendar year 2009 and 2011; and 30 TAC §106.4(c) and THSC, §382.085(b), by failing to maintain equipment at the site in good condition; 30 TAC §115.112(d)(1) and (e)(1) and THSC, §382.085(b), by failing to comply with storage tank control requirements; PENALTY: \$15,413; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Kuraray America, Incorporated; DOCKET NUMBER: 2013-1820-AIR-E; IDENTIFIER: RN100212216; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: a chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.146(1), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number 01561, General Terms and Conditions, by failing to submit the permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$7,312; Supplemental Environmental Project offset amount of \$2,925 applied to Barber's Hill Independent School District; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: MEHAK ENTERPRISES INCORPORATED dba Edom General Store; DOCKET NUMBER: 2013-0776-PST-E; IDENTIFIER: RN101892032; LOCATION: Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing

to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,567; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 2013-2100-PWS-E; IDENTIFIER: RN101258515; LOCATION: Los Indios, Cameron County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.111(e)(1)(B) and §290.122(b)(2)(A) and Texas Health and Safety Code, §341.0315(c), by failing to achieve a turbidity level of the combined filter effluent that is less than 0.3 nephelometric turbidity units (NTU) in at least 95% of the samples tested in June-September 2013 and failed to post public notification regarding the failure to achieve a turbidity level of the combined filter effluent that is less than 0.3 NTU in at least 95% of the samples tested in September 2013; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(25) COMPANY: PATTON LAKE, INCORPORATED; DOCKET NUMBER: 2013-1944-PWS-E; IDENTIFIER: RN101455848; LOCATION: Montgomery County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(A) and TCEQ Agreed Order Docket Number 2009-1946-PWS-E, Ordering Provision Number 2.e.i, by failing to locate the facility's well at least 150 feet from a septic tank perforated drainfield; and 30 TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2009-1946-PWS-E, Ordering Provision Number 2.c, by failing to obtain a sanitary control easement for all land within 150 feet of the facility's water well; PENALTY: \$3,960; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: THE DEVEREUX FOUNDATION dba Devereux Texas Treatment Network; DOCKET NUMBER: 2013-1808-PST-E; IDENTIFIER: RN102347614; LOCATION: League City, Galveston County; TYPE OF FACILITY: emergency generator with one underground storage tank (UST); RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3476(a), by failing to make available to a common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$6,975; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Timbercreek Real Estate Partners, L.L.C.; DOCKET NUMBER: 2013-1947-OSS-E; IDENTIFIER: RN106723836; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULE VIOLATED: 30 TAC §285.3(a) and Texas Health and Safety Code, §366.004 and §366.051(a), by failing to obtain authorization prior to constructing, altering, repairing, extending, or operating an OSSF; PENALTY: \$750; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(28) COMPANY: Timothy Lann McDonald; DOCKET NUMBER: 2013-1911-MSW-E; IDENTIFIER: RN106878572; LOCATION: Timpson, Shelby County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$8,250; ENFORCEMENT COORDINATOR: Michael Meyer, (512)

239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201400876

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 25, 2014



## Enforcement Orders

An agreed order was entered regarding BILAL ENTERPRISES, INC. dba 786 Truck Stop 2, Docket No. 2012-1220-PST-E on January 30, 2014, assessing \$5,768 in administrative penalties with \$1,153 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 Anthony Robert Monaco, Docket No. 2012-1256-LII-E on January 30, 2014, assessing \$262 in administrative penalties with \$52 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Granville Geronimo Martin III and Judy K. Martin dba Luke's Mobile Home Community, Docket No. 2013-0821-PWS-E on January 30, 2014, assessing \$1,305 in administrative penalties with \$261 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 Essent PRMC, L.P. dba Christus St Josephs Health System, Docket No. 2013-1132-PST-E on January 30, 2014, assessing \$5,143 in administrative penalties with \$1,028 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Souryarpan LLC dba Kwik Pick, Docket No. 2013-1169-PST-E on January 30, 2014, assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aryana, Inc. dba MLK Food Mart, Docket No. 2013-1199-PST-E on January 30, 2014, assessing \$3,547 in administrative penalties with \$709 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAVVIS COMMUNICATIONS CORPORATION, Docket No. 2013-1287-PST-E on January

30, 2014, assessing \$3,393 in administrative penalties with \$678 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 PROVIDENCE HEALTH SERVICES OF WACO dba Providence Health Center, Docket No. 2013-1294-PST-E on January 30, 2014, assessing \$4,713 in administrative penalties with \$942 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lubbock, Docket No. 2013-1321-IWD-E on January 30, 2014, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A&T, Inc. dba Gas N Stuff, Docket No. 2013-1368-PST-E on January 30, 2014, assessing \$7,243 in administrative penalties with \$1,448 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N & H Enterprises and Son, Inc. dba Super Stop 7, Docket No. 2013-1397-PST-E on January 30, 2014, assessing \$3,879 in administrative penalties with \$775 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James McIntire dba Holiday Trav L Park, Docket No. 2013-1442-PWS-E on January 30, 2014, assessing \$2,590 in administrative penalties with \$517 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHIN-ETSU SILICONES OF AMERICA, INC., Docket No. 2013-1460-PWS-E on January 30, 2014, assessing \$658 in administrative penalties with \$131 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 Sam's MoPac Auto Inc dba MoPac Auto Service Center, Docket No. 2013-1474-PST-E on January 30, 2014, assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding Chevron U.S.A. Inc., Docket No. 2013-1504-AIR-E on January 30, 2014, assessing \$3,638 in administrative penalties with \$727 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Y & V Enterprises, L.L.C. dba I-30 Mini Mart, Docket No. 2013-1522-PST-E on January 30, 2014, assessing \$4,500 in administrative penalties with \$900 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 HAYS CITY CORPORATION dba KWIK MART #1, Docket No. 2013-1523-PST-E on January 30, 2014, assessing \$2,937 in administrative penalties with \$587 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 Cross Roads Independent School District, Docket No. 2013-1526-MWD-E on January 30, 2014, assessing \$2,875 in administrative penalties with \$575 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 Houston Energy, L.P., Docket No. 2013-1531-AIR-E on January 30, 2014, assessing \$876 in administrative penalties with \$175 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIYOS, CORPORATION, Docket No. 2013-1535-AIR-E on January 30, 2014, assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. 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 Shakil Chowdhury dba Prime Stop 3, Docket No. 2013-1555-PST-E on January 30, 2014, assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M & J One Stop LLC dba Carter's Country Store, Docket No. 2013-1567-PST-E on January 30, 2014, assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAM H INVESTMENTS, INC. dba In & Out Grocery, Docket No. 2013-1568-PST-E on January 30, 2014, assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Faizan LLC dba Commercial Express, Docket No. 2013-1586-PST-E on January 30, 2014, assessing \$4,443 in administrative penalties with \$888 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tigua Transportation, Inc., Docket No. 2013-1635-PST-E on January 30, 2014, assessing \$3,484 in administrative penalties with \$696 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tri Thi Dang dba Kwik Stop, Docket No. 2013-1647-PST-E on January 30, 2014, assessing \$2,567 in administrative penalties with \$513 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 97 Circle S Convenience Stores, Inc. dba Circle S 11, Docket No. 2013-1650-PST-E on January 30, 2014, assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Sajjad dba Country Food Mart, Docket No. 2013-1690-PST-E on January 30, 2014, assessing \$4,687 in administrative penalties with \$937 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 3M Company, Docket No. 2013-1694-AIR-E on January 30, 2014, assessing \$6,000 in administrative penalties with \$1,200 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 PAMPA CONCRETE CO., INC., Docket No. 2013-1720-IWD-E on January 30, 2014, assessing \$4,013 in administrative penalties with \$802 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 FOREST WATER SUPPLY CORPORATION, Docket No. 2013-1723-PWS-E on January 30, 2014, assessing \$351 in administrative penalties with \$70 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stamford, Docket No. 2013-1724-PWS-E on January 30, 2014, assessing \$366 in administrative penalties with \$73 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 Joyce L. Boeker dba Wagon Yard Mobile Home Park, Docket No. 2013-1737-PWS-E on January 30, 2014, assessing \$142 in administrative penalties with \$28 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE NORTH AMERICAN ISLAMIC TRUST INC. dba Maryam Islamic Center, Docket No. 2013-1776-PWS-E on January 30, 2014, assessing \$374 in administrative penalties with \$74 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Troy, Docket No. 2013-1812-MWD-E on January 30, 2014, assessing \$1338 in administrative penalties with \$267 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 ENERGY PRODUCTION CORPORATION, Docket No. 2013-1842-AIR-E on January 30, 2014 assessing \$3,937 in administrative penalties with \$787 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 Shan Enterprises, Inc. dba Stop N Drive Food Mart, Docket No. 2013-1874-PST-E on January 30, 2014, assessing \$2,438 in administrative penalties with \$487 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. H. Strain & Sons, Inc., Docket No. 2013-1969-AIR-E on January 30, 2014, assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding James R. Windham, Docket No. 2013-2023-WOC-E on January 30, 2014, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brian K. Gay, Docket No. 2012-2104-OSI-E on February 13, 2014, assessing \$2,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Modesto Hernandez, Docket No. 2013-0362-PST-E on February 13, 2014, assessing \$12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brian K. Gay, Docket No. 2013-0391-OSI-E on February 13, 2014, assessing \$2,222 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BENGAL INVESTMENTS INC dba Santa Fe Express 1, Docket No. 2013-0420-PST-E on February 13, 2014, assessing \$8,879 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jorge Perez, Docket No. 2013-0461-WOC-E on February 13, 2014, assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duchman, Ltd. dba Duchman Family Winery, Docket No. 2013-0682-PWS-E on February 13, 2014, assessing \$6,058 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Annona, Docket No. 2013-0723-PWS-E on February 13, 2014, assessing \$1,060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Danny K. Gove dba Pro Landscape Service, Docket No. 2013-0752-AIR-E on February 13, 2014, assessing \$3,145 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca M. Combs, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Paradise Management, Inc. dba Guadalupe Express, Docket No. 2013-0791-PST-E on February 13, 2014, assessing \$8,881 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DuraTherm, Inc., Docket No. 2013-0848-IHW-E on February 13, 2014, assessing \$53,537 in administrative penalties with \$10,707 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 Owens Corning Insulating Systems, LLC, Docket No. 2013-0889-AIR-E on February 13, 2014, assessing \$16,576 in administrative penalties with \$3,315 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 Wes Granger, Docket No. 2013-0964-AIR-E on February 13, 2014, assessing \$1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Refugio, Docket No. 2013-0973-MWD-E on February 13, 2014, assessing \$11,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leroy Leonard Limas dba Limas Mobile Home Park, Docket No. 2013-1091-PWS-E on February 13, 2014, assessing \$3,744 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Country Club Retirement Community, L.P., Docket No. 2013-1118-MWD-E on February 13, 2014, assessing \$3,987 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bayer MaterialScience LLC, Docket No. 2013-1157-AIR-E on February 13, 2014, assessing \$21,262 in administrative penalties with \$4,252 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 COMMUNITY WATER SERVICE, INC., Docket No. 2013-1361-PWS-E on February 13, 2014, assessing \$1,052 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gerdau Ameristeel US Inc., Docket No. 2013-1463-AIR-E on February 13, 2014, assessing \$12,301 in administrative penalties with \$2,460 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wiley Lease Co., Ltd., Docket No. 2013-1465-AIR-E on February 13, 2014, assessing \$6,250 in administrative penalties.

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 Delek Refining, Ltd., Docket No. 2013-1534-AIR-E on February 13, 2014, assessing \$14,001 in administrative penalties with \$2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Los Fresnos, Docket No. 2013-1849-MWD-E on February 13, 2014, assessing \$17,100 in administrative penalties with \$3,420 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding DEFY INC. dba Shop N Save Food Mart, Docket No. 2012-1867-PST-E on February 18, 2014, assessing \$15,475 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shallowater, Docket No. 2013-0962-MWD-E on February 13, 2014, assessing \$3,013 in administrative penalties with \$602 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 BAKER HUGHES INCORPORATED, Docket No. 2013-1031-IWD-E on February 13, 2014, assessing \$5,743 in administrative penalties with \$1,148 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 QUICK FILL LLC dba A+ Convenience, Docket No. 2013-1056-PST-E on February 13, 2014, assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Army & Air Force Exchange Service, Docket No. 2013-1223-PST-E on February 13, 2014, assessing \$5,625 in administrative penalties with \$1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JN Khan Corporation dba Clark Express, Docket No. 2013-1229-PST-E on February 13, 2014, assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OVERSEAS ENTERPRISES USA, INC. dba Neighborly, Docket No. 2013-1264-PST-E on February 13, 2014, assessing \$3,825 in administrative penalties with \$765 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LEGACY RIDGE COUNTRY CLUB II, L.L.C., Docket No. 2013-1311-WR-E on February 13, 2014, assessing \$1,368 in administrative penalties with \$273 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 EBELING WATER SUPPLY CORPORATION, Docket No. 2013-1314-PWS-E on February 13, 2014, assessing \$1,020 in administrative penalties with \$204 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 HILS Usa Inc dba Bogata Foodmart, Docket No. 2013-1327-PST-E on February 13, 2014, assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIDLAND CENTRAL LLC dba ONE STOP, Docket No. 2013-1417-PST-E on February 13, 2014, assessing \$5,000 in administrative penalties with \$1,000 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 City of Coolidge, Docket No. 2013-1436-PWS-E on February 13, 2014, assessing \$875 in administrative penalties with \$175 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 Dallas Texas Properties, Inc. dba Howdy Doody 11, Docket No. 2013-1450-PST-E on February 13, 2014, assessing \$4,500 in administrative penalties with \$900 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 Willis Concepts LLC, Docket No. 2013-1464-IHW-E on February 13, 2014, assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ENCINAL WATER SUPPLY CORPORATION, Docket No. 2013-1512-PWS-E on February 13, 2014, assessing \$150 in administrative penalties with \$30 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 Lago Nayaab Enterprises Inc. dba SLR Grocery, Docket No. 2013-1552-PST-E on February 13, 2014, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A.L. BUTT, INC. dba Spin-n-Market 5, Docket No. 2013-1683-PST-E on February 13, 2014, assessing \$2,438 in administrative penalties with \$487 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 HOG CREEK WATER SUPPLY CORPORATION, Docket No. 2013-1712-PWS-E on February 13, 2014, assessing \$100 in administrative penalties with \$20 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 COASTAL TRANSPORT CO., INC., Docket No. 2013-1715-PST-E on February 13, 2014, assessing \$1,350 in administrative penalties with \$270 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 OILTANKING TEXAS CITY, L.P., Docket No. 2013-1819-AIR-E on February 13, 2014, assessing \$2,438 in administrative penalties with \$487 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 Mission Petroleum Carriers, Inc., Docket No. 2013-1824-PST-E on February 13, 2014, assessing \$1,350 in administrative penalties with \$270 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 Judy Rinker and Phyllis Bigby, Docket No. 2013-1898-PWS-E on February 13, 2014, assessing \$175 in administrative penalties with \$35 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Marazzi Tile, Inc., Docket No. 2013-1922-AIR-E on February 13, 2014, assessing \$5,025 in administrative penalties with \$1,005 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Kenneth Lesley, Docket No. 2013-2063-WR-E on February 13, 2014, assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Sheila M. Corbello, Docket No. 2013-2094-WR-E on February 13, 2014, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding A & D Card Lock, Docket No. 2013-2101-PST-E on February 13, 2014, assessing \$875 in administrative penalties.

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.

A field citation was entered regarding Brook Angus Ranch LP, Docket No. 2013-2105-WR-E on February 13, 2014, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Rust Ranch Co., Docket No. 2013-2121-WR-E on February 13, 2014, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding David R. Tedford, Docket No. 2013-2143-WOC-E on February 13, 2014, assessing \$175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201400883

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 26, 2014



#### Notice of Water Quality Applications

The following notices were issued on February 14, 2014, through February 21, 2014.

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

POSSUM KINGDOM WATER SUPPLY CORPORATION which operates the George N. Bailey, Jr. Water Treatment Plant, a reverse osmosis water treatment plant, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004325000, which authorizes the discharge of backwash water, process sampling water, and reverse osmosis concentrate at a daily average flow not to exceed 600,000 gallons per day via Outfall 001. The facility is located at 300 Lago Vista Road, approximately 0.5 mile south of the intersection of Farm-to-Market Road 2951 and Harris Drive, and approximately 16 miles west of the town of Graford, Palo Pinto County, Texas 76449.

SOLVAY USA INC which currently operates the Solvay USA Houston Plant (which consists of an inorganic chemicals plant that produces sulfuric acid and a hazardous waste incinerator), has applied for a major amendment to TPDES Permit No. WQ0000542000 to increase the temperature limitations at Outfall 001; increase effluent limitations for all limited parameters at Outfall 001; add a no exposure provision for stormwater to acknowledge that the truck staging area at the main entrance of the plant does not require authorization for stormwater discharge if the area meets certain no exposure requirements. The current permit authorizes the discharge of treated process wastewater, previ-

ously monitored effluent (PME; treated process, incinerator scrubber, and gas cooler wastewaters via Outfall 101), utility wastewater (consisting of equipment and pad washdowns, cooling tower and boiler blowdown, laboratory sinks and hoods wastewater, and water treatment clarifier sludge), sulfur dioxide (SO<sub>2</sub>) scrubber blowdown, and contaminated stormwater runoff at a daily average flow not to exceed 1,440,000 gallons per day via Outfall 001. The facility is located at 8615 Manchester Street, approximately one-half mile west of the intersection of Manchester Street and Interstate Loop 610, in the City of Houston, Harris County, Texas 77012. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

BIG JOHN'S WOOD PRODUCTS INC AND MW DAIRY FARM LLC for a New TPDES Permit No. WQ0005008000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate a new Dairy Replacement facility at a maximum capacity of 1525 head, of which zero head are milking cows. The facility is located at 2626 County Road 428, Stephenville, in Erath County, Texas.

THE CITY OF GRANBURY which proposes to operate the City of Granbury Water Treatment Plant, a reverse osmosis water treatment plant, to supply potable water to the City of Granbury, has applied for new TPDES Permit No. WQ0005099000 to authorize the discharge of reverse osmosis reject water, micro-filtration backwash, decanted water, and neutralized reverse osmosis and micro-filtration cleaning wastes via Outfall 001 at a daily average flow not to exceed 1,250,000 gallons per day during Interim Phase I, 2,500,000 gallons per day during Interim Phase II, and 3,750,000 gallons per day during the Final Phase. The facility is located at 1440 East Pearl Street, approximately 0.1 mile north of the intersection of Highway 377 and East Pearl Street, on the northeast side of East Pearl Street, in Hood County, Texas 76048.

CITY OF BAIRD has applied for a renewal of TPDES Permit No. WQ0010037001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located immediately east of TP Lake Dam and immediately south of the Texas-Pacific Railroad right-of-way in Callahan County, Texas 79504.

CITY OF BOERNE has applied for a renewal of TPDES Permit No. WQ0010066002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility is located at 41 Old San Antonio Road, approximately 1.82 miles southeast of the intersection of Interstate Highway 10 and State Highway 46, Boerne, in Kendall County, Texas 78006.

CITY OF MINERAL WELLS has applied for a renewal of TPDES Permit No. WQ0010585001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,350,000 gallons per day. The facility is located at 1700 Pollard Creek Drive, in the city of Mineral Wells, in Palo Pinto County, Texas 76067.

CITY OF HITCHCOCK has applied for a renewal of TPDES Permit No. WQ0010690001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 7725 Hacker Road, approximately one mile south of the intersection of State Highway 6 and Farm-to-Market Road 519 in the City of Hitchcock, Galveston County, Texas 77563.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0011630002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow

not to exceed 110,000 gallons per day. The facility is located 3,700 feet northeast of the intersection of Kuykendahl and Kuykendahl-Huffsmith Road, and 9,300 feet west of Gosling Road in Harris County, Texas 77389.

ADDICKS UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011696002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located at 18450 Groeschke Road, approximately 0.13 mile east of the intersection of Barker-Cypress Road and Morton Road (Groeschke Road) adjacent to Morton Road, and approximately two miles north of the intersection of Interstate Highway 10 and Barker-Cypress Road in Harris County, Texas 77084.

S I ENTERPRISES LLC has applied for a new permit TPDES Permit No. WQ0013316002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0013316001, which expired May 1, 2013. The facility is located at 16643 Jacintoport Boulevard in Harris County, Texas 77015. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF MIDWAY has applied for a renewal of TPDES Permit No. WQ0013378001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of the City of Midway in Madison County, Texas 75852.

SRALLA MHP LP has applied for a renewal of TPDES Permit No. WQ0014500001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 13535 Saralla Road, Crosby, approximately 1,750 feet north of the intersection of Farm-to-Market Road 1942 and Saralla Road in Harris County, Texas 77532.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201400882

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 26, 2014

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## Texas Facilities Commission

### Request for Proposals #303-5-20428

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-5-20428. TFC seeks a five (5) or ten (10) year lease of approximately 8,076 square feet of office space in El Paso, El Paso County, Texas.

The deadline for questions is March 17, 2014, and the deadline for proposals is March 25, 2014, at 3:00 p.m. The award date is April 16, 2014. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease

on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=110190](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=110190).

TRD-201400895

Kay Molina

General Counsel

Texas Facilities Commission

Filed: February 26, 2014



## Department of Family and Protective Services

### Award of Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC), on behalf of the Department of Family and Protective Services, announces the award of contract 530-14-84910 to The Stephen Group, an entity with a principal place of business at 814 Elm Street, Suite 309, Manchester, New Hampshire 03104. The contractor will conduct an operational review of its Child Protective Services (CPS) Division. The notice of request for proposal was published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 6059).

The total value of the contract with The Stephen Group is \$750,000. The contract was executed on February 21, 2014, and will expire on January 31, 2015, unless extended or terminated sooner by the parties. The Stephen Group will produce numerous documents and reports during the term of the contract, with the final reporting due by January 31, 2015.

TRD-201400863

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Filed: February 24, 2014



## General Land Office

### Corrected Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

Correction: The following projects were originally posted for public comment in the February 14, 2014, issue of the *Texas Register* (39 TexReg 1025). That posting stated that the public notice would also be published on the Texas General Land Office web site from February 5 through March 5, 2014; however, the notice was not published on the Texas General Land Office web site until February 12, 2014. Therefore, the public comment period for these projects will close at 5:00 p.m. on March 14, 2014.

#### FEDERAL AGENCY ACTIONS:

##### **Applicant: Calhoun County Commissioner Precinct 1;**

Location: The project site is located in wetlands adjacent to Matagorda Bay at Ocean Drive, Magnolia Beach, spanning 1 mile, and terminating just past 23rd Street, in Indianola, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Lavaca East, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 28.56003 North; Longitude: 96.53784 West.

Project Description: The applicant proposes to raise the roadbed elevation of N. Ocean Drive along the western shore of Matagorda Bay. The proposed project would permanently impact 1.8 acres of tidally-influenced wetlands.

CMP Project No: 14-1344-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2013-00336. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

##### **Applicant: Trinity Bay Conservation District;**

Location: The project site is located in Mayhaw Bayou, in Winnie, Chambers County Texas. The project can be located on the U.S.G.S. quadrangle map titled: Stowell, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.820392 North; Longitude: 94.386002 West.

Project Description: The applicant proposes to discharge 578 cubic yards of concrete below the ordinary high water mark for the purpose of widening and deepening approximately 2,323 linear feet of an unnamed tributary to Mayhaw Bayou and providing erosion protection along the banks so that the bayou may convey stormwater downstream and away from existing residential areas.

CMP Project No: 14-1358-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2012-00810. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

##### **Applicant: Port of Corpus Christi;**

Location: The project is located in the Port of Corpus Christi at the north bulkhead line of the Tule Lake Channel, west of the Bulk Terminal Dock Number 2, near Torch Petroleum in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Northing: 3078410; Easting: 649723. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.82199 North; Longitude: -97.47981 West.

Project Description: The applicant proposes to amend the depth of an existing project from -16 feet MLT (-12 feet plus 2-foot advanced maintenance plus 2-foot allowable overdepth) to -20 feet MLT (-16 feet plus 2-foot advanced maintenance plus 2-foot allowable overdepth). The new project depth would increase the +/-16.9-acre existing project area by 2.15 acres and increase the current 286,537 cubic yard projected dredged material volume by approximately 74,935 cubic yards.

CMP Project No: 14-1367-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2001-00996. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

##### **Applicant: John Nau;**

Location: The project site is located in Aransas Bay, at 1 Finisterre Street in the Key Allegro Subdivision, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Rockport, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 28.031787 North; Longitude: -97.026465 West.

Project Description: The applicant proposes to construct a new bulkhead in front of a failed, existing bulkhead for erosion control and to reclaim land that has eroded into waters of the United States (U.S.). Approximately 209 cubic yards of material would be placed behind the proposed bulkhead to backfill approximately 2,821.5 square feet of unvegetated jurisdictional waters of the U.S.

CMP Project No: 14-1370-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2011-00880. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**Applicant: Charles Doolin;**

Location: The project site, Point Glass, is located along the north shore of Offatts Bayou, at 7404 Broadway, south of the Gulf Freeway, in Galveston County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: GALVESTON, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 29.28646 North; Longitude: -94.85308 West.

Project Description: The applicant proposes to mechanically dredge 6,000 cubic yards at the Point Glass facility to provide access for two large vessels and two boathouse slips. Approximately 1,500 cubic yards of the excavated material will be beneficially placed for wetland creation. The remainder of the sand will be placed on the upland for fill. The applicant also proposes to construct an L-shaped extension off the existing pier along the eastern boundary of the Sea Scout property (SWG-2008-00245). The first leg of the extension will be 10-foot-wide by 42-foot-long and will run parallel to the shoreline and connect to a perpendicular extension which is 10-foot-wide by 120-foot-long. Additionally, five 1-foot 10-inch mooring pilings will be installed along the existing Sea Scout pier (SWG-2008-00245) and an additional ten 1-foot 10-inch mooring pilings will be installed along the proposed 120-foot-long walkway and adjacent shore to moor a large vessel. As a second option to the wooded pier, the applicant is asking to be able to install a 13-foot-wide by 125-foot-long floating pontoon structure anchored by steel pilings to serve as a pier for mooring a large vessel.

CMP Project No: 14-1371-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2013-00770. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**Applicant: Greehey and Company, Ltd.;**

Location: The project site is located in adjacent wetlands and waters of Aransas Bay at the proposed Pegasus Bay development site, approximately 0.5 miles northeast of the State Highway (SH) 35 and SH 188 intersection. The project can be located on the U.S.G.S. quadrangle map titled: ESTES, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.96156 North; Longitude: 97.09765 West.

Project Description: The applicant proposes to create a mixed-use marina development with direct access to the Gulf Intracoastal Waterway (GIWW) on a 46.72-acre tract, which will include a marina, hotel, condominiums, retail space and single family residential development. The applicant states that the proposed marina design will include a canal system which will allow for water circulation by expanding the existing connection to the GIWW to take advantage of the predominant southeasterly breeze and allow water to move into and out of the canal. The proposed canal will have a uniform depth of -8.00 ft MSL and will vary in width from 100 feet at its narrowest point to 550 feet at its widest point. Approximately 56,551 cubic yards of material are proposed to be mechanically excavated from jurisdictional areas and 183,585 cubic yards of material from uplands during the creation of the proposed marina and canal. Additionally, the applicant proposes to construct approximately 4,430 linear feet of bulkhead within the proposed canal.

CMP Project No: 14-1372-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2008-00652. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**Applicant: Revesser, LLC;**

Location: The project is located in Mustang Island wetlands, intertidal areas of the East Flats and uplands, at the Newport Landings Property. The project site encompasses a 264.10-acre tract located immediately west of the intersection of State Highway 361 and Mustang Boulevard, in Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.799317 North; Longitude: 97.096251 West.

Project Description: The applicant proposes to construct a waterfront single family residential development with open water access. The applicant is proposing to excavate approximately 13.42 acres of jurisdictional areas to accommodate the construction of the canal network on the property. Canals would be constructed primarily in the dry (mechanical excavation) with a potentially small volume hydraulically dredged in areas where mechanical excavation is not feasible. All excavated and dredged material would be placed in upland areas on site. No fill in jurisdictional areas is proposed.

CMP Project No: 14-1360-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2005-00522. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

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 Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201400896

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: February 26, 2014



**Public Notice of the Texas Coastal Management Program's Submission of Routine Program Changes to the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management**

*(Editor's note: The General Land Office submitted this Public Notice and it was published in the February 21, 2014, issue of the Texas Register (39 TexReg 1285). Due to a publishing error, the figure was not included in the issue. The Public Notice and figure are republished in their entirety.)*

On December 6, 2013, the General Land Office (GLO), on behalf of the State of Texas, submitted a program change document for the Texas Coastal Management Program (CMP) to the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and



Coastal Resource Management (OCRM). Pursuant to the Coastal Zone Management Act (CZMA) and applicable regulations, the GLO requested OCRM's concurrence with the determination that the program changes are "routine program changes," as that term is defined in 15 C.F.R. §923.84.

Concurrent with notifying and submitting the routine program changes to OCRM, the GLO provided public notice of the submittal to the general public and affected parties (including local governments, state agencies, and relevant federal agencies) by posting a public notice on the GLO's website, emailing stakeholders, and publishing a public notice in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8943). The program change document has been available to the public since December 6, 2013. As stated in the prior public notice, a copy of the program change document may be obtained from the GLO (see contact information below) or downloaded from the GLO's website: <http://www.glo.texas.gov/what-we-do/caring-for-the-coast/grants-funding/cmp/>.

In a letter dated January 27, 2014, OCRM concurred with the GLO's routine program changes determination and approved the incorporation of the changes as enforceable and non-enforceable policies of the CMP. OCRM also recognized the incorporation of changes to various statutes

that the GLO included in the program change document. A comprehensive list of the approved program changes, which was an enclosure to OCRM's concurrence letter, is provided as part of this public notice.

The approved program changes do not add to or change the enforceable policies of the CMP in 31 TAC §§501.10 - 501.34 (CMP Goals and Policies), with the exception of minor technical changes to 31 TAC §§501.10(a), 501.34(a)(4), and 501.16. The other changes are to Texas CMP statutory, regulatory, and enforcement authorities, which do not change the enforceable policies of the program.

This public notice is being published pursuant to 15 C.F.R. §923.84(b)(4), which requires the Texas CMP to provide public notice of OCRM's concurrence. Upon publication of this notice, Federal Consistency will apply to the approved changes to the enforceable policies.

For more information on this matter, or to request a copy of OCRM's concurrence letter, please contact Sheri Land, Director, Coastal Resources, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873 or email [sheri.land@glo.texas.gov](mailto:sheri.land@glo.texas.gov).

Enclosure to OCRM's January 27, 2014, Approval of the Incorporation of Changes to  
the Texas Coastal Management Program

Changes marked with an asterisk (\*) are incorporated into the Texas Coastal Management Program, but do not  
contain enforceable policies that can be used for Federal Consistency.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
ADDED:		mm/dd/yyyy	mm/dd/yyyy
*Texas Coastal Observation Network (TCOON)	NRC 33.065	06/17/2005	06/17/2005
*Property Rights: Preservation of Littoral Rights	NRC 33.136	09/01/1999	09/01/1999
*Coastal Erosion Planning and Response Act (CEPRA)	NRC 33.601, 33.602, 33.603, 33.604, 33.605, 33.606, 33.607, 33.608, 33.609, 33.610, 33.611, 33.612	09/01/1999	09/01/1999
*Closure on Modification of Certain Man-Made Passes	NRC 33.613	09/01/2009	09/01/2009
*Coastal Protection and Improvement Act	NRC 33.651, 33.652, 33.653, 33.654, 33.655, 33.656, 33.657, 33.658, 33.659, 33.660, 33.661, 33.662, 33.663	09/01/2007	09/01/2007
*Leasing for Offshore Carbon Sequestration	HSC 382.501, 382.502, 382.503, 382.504, 382.505, 382.506, 382.507, 382.508, 382.509, 382.510	09/01/2009	09/01/2009
MODIFIED:			
*CMP Boundary Changed to Exclude Liberty County	NRC 33.203(7)(b)	05/28/1997	05/28/1997
*Sunset Review – Abolition of the Coastal Coordination Council	NRC 33.204, 33.2041, 33.205, 33.2051, 33.2052, 33.2053, 33.206, 33.207, 33.208, 33.209	09/01/2011	09/01/2011
*Minor technical changes	31 TAC 501.3	10/29/2006	10/29/2006
*Frequency of Council Meetings	31 TAC 501.4(b)	03/29/2010	03/29/2010
*Minor technical changes	31 TAC 501.4(c),(e),(f)	07/15/2002	07/15/2002
Minor technical changes	31 TAC 501.10(a), 501.13(a)(4), 501.16	10/27/2006	10/27/2006
*Derelict Vessel Removal Program	NRC 40.108	09/01/2005	09/01/2005
*Changes to Texas Open Beaches Act	NRC 61.011	09/01/2011	09/01/2011
*GLO Is Primary Enforcer of Open Beaches Act	NRC 61.018	06/19/2009	06/19/2009
*GLO Responsible to Clean Public Beaches After Disaster	NRC 61.067	09/01/2009	09/01/2009
*Changes to the Texas Dune Protection Act	NRC 63.121	09/01/2007	09/01/2007
*Exemption from CCN Requirement (PUC)	TUC 37.051	09/01/1997	09/01/1997

Enclosure to OCRM's January 27, 2014, Approval of the Incorporation of Changes to  
the Texas Coastal Management Program

Changes marked with an asterisk (\*) are incorporated into the Texas Coastal Management Program, but do not  
contain enforceable policies that can be used for Federal Consistency.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
		09/01/1999 (minor technical change, 06/19/2009)	09/01/1999 (minor technical change, 06/19/2009)
*Minor technical change	TGC 551.0035	06/04/2001	06/04/2001
*Minor technical change	TGC 551.0411	06/17/2005	06/17/2005
*Minor technical change	TGC 551.086	06/17/2001	06/17/2001
*Minor technical change	TGC 552.0225	09/01/1999	09/01/1999
*Minor technical change	TGC 552.022, 552.133	09/01/2011	09/01/2011
*Minor technical change	TGC 552.205	09/01/2005	09/01/2005
*Minor technical change	TGC 552.309	06/07/2011	06/07/2011
*Minor technical change	TGC 552.320, 552.321, 552.3215	09/01/1999	09/01/1999
*Minor technical change	TGC 552.324	09/01/2009	09/01/2009
*Minor technical change	TGC 552.326	09/01/1999	09/01/1999
*Minor technical change	TGC 552.351	06/13/2001	06/13/2001
*Minor technical change	TGC 2001.006	09/01/1999	09/01/1999
*Minor technical change	TGC 2001.007	06/18/1999	06/18/1999
*Minor technical change	TGC 2001.041	09/01/2003	09/01/2003
*Minor technical change	NRC 32.061	06/19/2009	06/19/2009
*Minor technical change	NRC 33.002, 33.004(2), (2-a)	09/01/2011	09/01/2011
*Minor technical change	NRC 33.004(15)	06/17/2005	06/17/2005
*Minor technical changes	NRC 33.012, 33.014	09/01/2007	09/01/2007
*Minor technical changes	NRC 33.016	01/01/2004	01/01/2004
*Minor technical change	NRC 33.063, 33.102, 33.103, 33.104, 33.105, 33.110	09/01/2007	09/01/2007
*Minor technical changes	NRC 33.115	05/17/2005	05/17/2005
*Minor technical changes	NRC 33.124, 33.171, 33.656, 40.107, 40.108	05/13/2005	05/13/2005
*Minor technical changes	NRC 51.121, 51.291	06/15/2007	06/15/2007
*Minor technical changes	NRC 51.292	05/19/2009	05/19/2009
*Minor technical changes	NRC 51.296	09/01/2007	09/01/2007
*Minor technical changes	NRC 51.297	06/19/2009	06/19/2009

Enclosure to OCRM's January 27, 2014, Approval of the Incorporation of Changes to  
the Texas Coastal Management Program

Changes marked with an asterisk (\*) are incorporated into the Texas Coastal Management Program, but do not  
contain enforceable policies that can be used for Federal Consistency.

Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
*Minor technical changes	NRC 51.302	06/15/2007	06/15/2007
*Minor technical changes	NRC 53.016	05/27/2003	05/27/2003
*Minor technical changes	NRC 61.015	09/01/2007	09/01/2007
*Minor technical changes	NRC 61.017	09/19/2009	09/19/2009
*Minor technical changes	NRC 61.020	09/01/2007	09/01/2007
*Minor technical changes	NRC 61.021	06/18/2003	06/18/2003
*Minor technical changes	NRC 61.022, 61.025	05/05/2009	05/05/2009
*Minor technical changes	NRC 61.026	09/01/2001	09/01/2001
*Minor technical changes	NRC 61.082	05/05/2009	05/05/2009
*Minor technical changes	NRC 61.122	05/22/2001	05/22/2001
*Minor technical changes	NRC 63.002(6)	09/01/2001	09/01/2001
*Minor technical changes	NRC 63.054, 63.056, 63.121, 63.181, 63.1811, 63.1812, 63.1813, 63.1814	09/01/2007	09/01/2007
*Minor technical changes	NRC 81.0531	09/01/2001	09/01/2001
*Minor technical change	TUC 37.001	09/01/1999	09/01/1999
*Minor technical change	TUC 37.052	09/01/1997	09/01/1997
*Minor technical change	TUC 37.053, 37.054	06/17/2011	06/17/2011
*Minor technical change	TUC 37.055	06/19/2009	06/19/2009
*Minor technical change	TUC 37.056	06/17/2011	06/17/2011
*Minor technical change	TUC 37.057	06/19/2009	06/19/2009
*Minor technical change	TUC 37.059	09/01/1997	09/01/1997
*Minor technical change	TUC 37.060	06/14/2001	06/14/2001
*Minor technical change	TUC 37.061, 37.101	09/01/1999	09/01/1999
*Minor technical change	TUC 37.102, 37.151, 37.152	09/01/1997	09/01/1997
*Minor technical change	TUC 37.153	09/01/2005	09/01/2005
*Minor technical change	TUC 37.154, 37.155, 37.156, 37.157	09/01/1997	09/01/1997
*Minor technical changes	TAC 22.52	11/20/2011	11/20/2011
*Minor technical changes	TAC 25.101	04/04/2012	04/04/2012
DELETED:			
*Repeal: Sunset Review – Abolition of the Coastal Coordination Council	33.2042, 33.2043, 33.2044, 33.2045, 33.211, 33.212	09/01/2011	09/01/2011
*Repeal of Requirement for Coastal Discharge	NRC 40.053, 40.117	09/01/2003	09/01/2003

Enclosure to OCRM's January 27, 2014, Approval of the Incorporation of Changes to  
the Texas Coastal Management Program

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
Contingency Plan			
CLEAN AIR ACT – ADDED			
*Texas Health and Safety Code, Chapter 382	HSC 382.004	09/01/2005	09/01/2005
	HSC 382.0173	05/10/2007	05/10/2007
	HSC 382.0201	09/01/2001	09/01/2001
	HSC 382.0215	09/01/2011	09/01/2011
	HSC 382.0216	09/01/2001	09/01/2001
	HSC 382.0275	05/08/2007	05/08/2007
	HSC 382.0335	09/01/2007	09/01/2007
	HSC 382.05181, 382.05182, 382.05183	09/01/2001	09/01/2001
	HSC 382.05184	09/01/2005	09/01/2005
	HSC 382.05185	09/01/2001	09/01/2001
	HSC 382.051866	06/15/2007	06/15/2007
	HSC 382.0519, 382.05191, 382.05192, 382.05193	08/30/1999	08/30/1999
	HSC 382.05194	06/14/2001	06/14/2001
	HSC 382.05195	09/01/2005	09/01/2005
	HSC 382.05196	08/30/1999	08/30/1999
	HSC 382.05197	09/01/2005	09/01/2005
	HSC 382.05198, 382.05199	09/01/2003	09/01/2003
	HSC 382.0565	06/18/2005	06/18/2005
	HSC 382.0566	09/01/2007	09/01/2007
	HSC 382.066	09/01/2003	09/01/2003
	HSC 382.068	09/01/2009	09/01/2009
	HSC 382.201, 382.203, 382.204, 382.205, 382.206	09/01/2001	09/01/2001
	HSC 382.209, 382.210	09/01/2011	09/01/2011
	HSC 382.211, 382.212	09/01/2001	09/01/2001
	HSC 382.213	09/01/2011	09/01/2011
	HSC 382.214, 382.215, 382.216	09/01/2001	09/01/2001
	HSC 382.218	09/01/2011	09/01/2011
	HSC 382.219	06/08/2007	06/08/2007

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	HSC 382.220	09/01/2009	09/01/2009
	HSC 382.301, 382.302	06/10/2003	06/10/2003
	HSC 382.401	06/15/2007	06/15/2007
	HSC 382.05101	09/01/2003	09/01/2003
<b>CLEAN AIR ACT – MODIFIED</b>			
*Texas Health and Safety Code, Chapter 382	HSC 361.088	09/01/2001	09/01/2001
	HSC 382.003	09/01/2011	09/01/2011
	HSC 382.0172	09/01/2005	09/01/2005
	HSC 382.051	09/01/2001	09/01/2001
	HSC 382.0511	09/01/2003	09/01/2003
	HSC 382.0512	09/01/1999	09/01/1999
	HSC 382.0516	06/08/2007	06/08/2007
	HSC 382.0518	09/01/2011	09/01/2011
	HSC 382.055	05/22/2007	05/22/2007
	HSC 382.056	09/01/2011	09/01/2011
	HSC 382.057	08/30/1999	08/30/1999
	HSC 382.058	09/01/2001	09/01/2001
	HSC 382.062, 382.0621	08/30/1999	08/30/1999
	HSC 382.0622	09/01/2009	09/01/2009
	HSC 382.085	09/01/1997	09/01/1997
	HSC 382.202	06/08/2007	06/08/2007
	HSC 382.207	09/01/2001	09/01/2001
	HSC 382.208	09/01/1991	09/01/1991
<b>CLEAN AIR ACT – DELETED (REPEALED)</b>			
*Texas Health and Safety Code, Chapter 382	HSC 382.081, 382.082, 382.114	09/01/1997	09/01/1997
	HSC 382.131, 382.132, 382.133, 382.134, 382.135, 382.136, 382.137, 382.138, 382.139, 382.140, 382.142	09/01/2005	09/01/2005
	HSC 382.143	09/10/2005	09/10/2005
<b>TEXAS WATER CODE – ADDED</b>			
*Texas Water Code Chapter 7. Enforcement	TWC 7.001	09/01/1997	09/01/1997
	TWC 7.002	09/01/2009	09/01/2009

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	TWC 7.0025	09/01/2005	09/01/2005
	TWC 7.00251	06/18/2007	06/18/2007
	TWC 7.0026	06/20/2003	06/20/2003
	TWC 7.003, 7.004, 7.005	09/01/1997	09/01/1997
	TWC 7.031	09/01/2001	09/01/2001
	TWC 7.032	09/01/1997	09/01/1997
	TWC 7.033	09/01/2003	09/01/2003
	TWC 7.034	09/01/2007	09/01/2007
	TWC 7.051	09/01/1997	09/01/1997
	TWC 7.052	06/17/2011	06/17/2011
	TWC 7.0525	09/01/2005	09/01/2005
	TWC 7.053, 7.054, 7.055, 7.056, 7.057, 7.058, 7.059, 7.060, 7.061, 7.062, 7.063, 7.064, 7.065, 7.066	09/01/1997	09/01/1997
	TWC 7.067	09/01/2011	09/01/2011
	TWC 7.068	09/01/1997	09/01/1997
	TWC 7.069	09/01/2007	09/01/2007
	TWC 7.070, 7.071, 7.072, 7.073, 7.074, 7.075, 7.101	09/01/1997	09/01/1997
	TWC 7.102	06/08/2007	06/08/2007
	TWC 7.103, 7.104, 7.105, 7.106, 7.107, 7.108, 7.109, 7.110, 7.141, 7.142, 7.143, 7.145, 7.147, 7.148, 7.149, 7.150, 7.151, 7.152, 7.153, 7.154, 7.155	09/01/1997	09/01/1997
	TWC 7.156	09/01/2005	09/01/2005
	TWC 7.1565	09/01/1999	09/01/1999
	TWC 7.157, 7.158, 7.159, 7.160, 7.161, 7.162, 7.163, 7.164, 7.165, 7.166, 7.167, 7.168, 7.169, 7.170, 7.171, 7.172, 7.173	09/01/1997	09/01/1997
	TWC 7.1735	09/01/2005	09/01/2005
	TWC 7.174, 7.175	09/01/1997	09/01/1997
	TWC 7.176	09/01/2005	09/01/2005

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	TWC 7.177, 7.178, 7.179, 7.180, 7.181, 7.182, 7.183	09/01/1997	09/01/1997
	TWC 7.1831	09/01/2011	09/01/2011
	TWC 7.184, 7.185, 7.186	09/01/1997	09/01/1997
	TWC 7.187	09/01/2009	09/01/2009
	TWC 7.188, 7.189, 7.190, 7.191, 7.192, 7.193, 7.194, 7.195, 7.196, 7.197, 7.198, 7.199, 7.200, 7.201, 7.202	09/01/1997	09/01/1997
	TWC 7.203	09/01/2003	09/01/2003
	TWC 7.251, 7.252, 7.253, 7.254, 7.255	09/01/1997	09/01/1997
	TWC 7.256	09/01/2009	09/01/2009
	TWC 7.257	06/17/2011	06/17/2011
	TWC 7.301, 7.302	09/01/1997	09/01/1997
	TWC 7.303	09/01/2003	09/01/2003
	TWC 7.304, 7.305, 7.306, 7.307, 7.308, 7.309, 7.310	09/01/1997	09/01/1997
	TWC 7.351	09/01/2003	09/01/2003
	TWC 7.352, 7.353, 7.354, 7.355, 7.356, 7.357, 7.358	09/01/1997	09/01/1997
*Texas Water Code Chapter 26. Water Quality Control	TWC 26.0271	09/01/2009	09/01/2009
	TWC 26.0286	09/01/2005	09/01/2005
	TWC 26.0292, 26.0345	09/01/1999	09/01/1999
	TWC 26.0405	05/28/1999	05/28/1999
	TWC 26.0491	09/01/2005	09/01/2005
	TWC 26.052	09/01/2003	09/01/2003
	TWC 26.132	09/01/2007	09/01/2007
	TWC 26.137	09/01/2001	09/01/2001
	TWC 26.302	09/01/2009	09/01/2009
	TWC 26.303	09/01/2007	09/01/2007
	TWC 26.3465	09/01/1999	09/01/1999
	TWC 26.3467	09/01/2011	09/01/2011
	TWC 26.3476	09/01/2001	09/01/2001
	TWC 26.3516	09/01/1999	09/01/1999



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	TWC 26.364, 26.365, 26.366, 26.367	09/01/2001	09/01/2001
	TWC 26.408	09/01/2003	09/01/2003
	TWC 26.501, 26.502, 26.503	09/01/2001	09/01/2001
	TWC 26.504	06/01/2010	06/01/2010
	TWC 26.551, 26.552, 26.553, 26.554, 26.555, 26.556, 26.557, 26.558, 26.559, 26.560	06/17/2005	06/17/2005
	TWC 26.561	06/17/2011	06/17/2011
	TWC 26.562	06/17/2005	06/17/2005
TEXAS WATER CODE – MODIFIED			
*Texas Water Code Chapter 26. Water Quality Control	TWC 26.001	09/01/2001	09/01/2001
	TWC 26.0136, 26.019, 26.0191, 26.021, 26.022, 26.023	09/01/1997	09/01/1997
	TWC 26.028, 26.0281	09/01/2011	09/01/2011
	TWC 26.029	09/01/1997	09/01/1997
	TWC 26.0291	09/01/2009	09/01/2009
	TWC 26.0311	09/01/2003	09/01/2003
	TWC 26.036, 26.037	05/24/1999	05/24/1999
	TWC 26.039	09/01/1999	09/01/1999
	TWC 26.040	09/01/2011	09/01/2011
	TWC 26.044, 26.045	09/01/2009	09/01/2009
	TWC 26.0461	09/01/2007	09/01/2007
	TWC 26.049	04/01/2009	04/01/2009
	TWC 26.121	06/18/1999	06/18/1999
	TWC 26.135	09/01/2003	09/01/2003
	TWC 26.264	09/01/2011	09/01/2011
	TWC 26.266	09/01/1997	09/01/1997
	TWC 26.301	03/01/1998	03/01/1998
	TWC 26.342	09/01/2011	09/01/2011
	TWC 26.344	09/01/1999	09/01/1999
	TWC 26.346	09/01/2001	09/01/2001
	TWC 26.3511	09/01/1997	09/01/1997

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Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
	TWC 26.3512	09/01/2001	09/01/2001
	TWC 26.3513	09/01/1997	09/01/1997
	TWC 26.352	09/01/2007	09/01/2007
	TWC 26.354	09/01/1997	09/01/1997
	TWC 26.355	09/01/2005	09/01/2005
	TWC 26.3571, 26.3572	09/01/2001	09/01/2001
	TWC 26.3573	09/01/2011	09/01/2011
	TWC 26.35731	09/01/2005	09/01/2005
	TWC 26.35735	09/01/1997	09/01/1997
	TWC 26.3574	09/01/2011	09/01/2011
	TWC 26.358	08/27/2007	08/27/2007
	TWC 26.359	09/01/2001	09/01/2001
	TWC 26.361	08/27/2007	08/27/2007
	TWC 26.403	08/30/1999	08/30/1999
	TWC 26.452, 26.456	09/01/2001	09/01/2001
<b>TEXAS WATER CODE – DELETED</b>			
*Texas Water Code Chapter 7. Enforcement	TWC 7.144	09/01/2001	09/01/2001
*Texas Water Code Chapter 26. Water Quality Control	TWC 26.016, 26.211, 26.212, 26.2125, 26.2126, 26.214, 26.216, 26.218, 26.219, 26.220, 26.221, 26.222, 26.223, 26.353	09/01/1997	09/01/1997

TRD-201400654  
Larry L. Laine  
Chief Clerk, Deputy Land Commissioner  
General Land Office  
Filed: February 11, 2014

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**Texas Higher Education Coordinating Board**

Notice of Intent to Engage in Negotiated Rulemaking - Exemptions Relating to House Bill 5 College Prep Courses (Public Universities; Community, Technical, and State Colleges; Education Service Centers; and Public Independent School Districts)

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for exemptions relating to House Bill (HB) 5 college prep courses. HB 5 passed by the

83rd Texas Legislature, Regular Session, requires each school district to partner with at least one institution of higher education to develop and provide college preparatory courses in mathematics and English language arts. A student who successfully completes a college preparatory course is exempt from requirements of the Texas Success Initiative with respect to the content area of the course that is successfully completed. HB 5 also stipulates that the Commissioner of Higher Education by rule shall establish the period for which an exemption is valid. The exemption applies only at the institution of higher education that partners with the school district in which the student is enrolled to provide the course, except that the Commissioner of Higher Education by rule may determine the manner in which the exemption may be applied to institutions of higher education other than the partnering institution. The Commissioner of Higher Education would like to engage affected stakeholders in developing these rules through the negotiated rulemaking process.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presi-

dents of public universities, community, technical, and state colleges, and public independent school districts, via Education Service Centers, soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative.

From this effort, 45 individuals responded (out of approximately 130 institutions and 20 education service centers) and expressed an interest to participate or nominated someone to participate on the negotiated rulemaking committee for exemptions relating to HB 5 college prep courses. The positions held by the volunteers and nominees includes Presidents, Superintendents, Vice Presidents, Directors, and Counselors. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for exemptions relating to HB 5 college prep courses:

- 1) Public Universities;
- 2) Public Community Colleges;
- 3) Public Technical Colleges;
- 4) Public State College;
- 5) Public Independent School Districts;
- 6) Education Service Centers; and
- 7) The Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 24 individuals to the negotiating rulemaking committee for exemptions relating to HB 5 college prep courses to represent affected parties and the agency:

#### *Community Colleges*

Anglin, Pam, President, Paris Junior College

Balmos, Donald, Vice President of Instruction, McLennan Community College

Barron, Glenda, President, Temple College

Devora-Jones, Kayla, Director of Dual Enrollment Program, Coastal Bend College

Hellyer, Brenda, President, San Jacinto College Lewis, Beth, President, College of the Mainland

Rhodes, Richard, President, Austin Community College District

Slaton, Debra, Division Chair of Developmental Education, Cisco College

#### *Technical Colleges*

Garza-Mitchell, Regina, Interim Vice President for Student Learning, Texas State Technical College-Harlingen

#### *Public Universities*

Calvi, James, Associate Dean College of Education and Social Science, West Texas A&M University

Kulhanek, Joseph, Director P-20 Initiatives, The University of Texas at San Antonio

Robinson, Jr., John, Executive Director Student Academic Enhancement Services, Texas Southern University

Saenz, Laura, Associate Vice Provost, The University of Texas-Pan American

Stein, Kathy, Director of Academic Center for Excellence, Sul Ross State University

#### *Independent School Districts*

Crownover, Linda, Executive Director of Curriculum and Instruction, Weatherford ISD (ESC 11)

Kim, Andrew, Superintendent, Comal ISD (ESC 11)

Larson, Roy, Director Career Tech Education, Seguin ISD (ESC 13)

Lofton, Suzy, Director of Curriculum & Instruction, Lago Vista ISD (ESC 13)

Martinez, Sonya, Director of Accountability and Assessment, Pearsall ISD (ESC 20)

Poth, Janna, Component Director Instructional Services, Education Service Center Region 20

Spencer, Tracye, Counselor, Glasscock County ISD (ESC 18)

Strong, Dennis-Ann, Executive Director of Secondary Instruction, Northside ISD (ESC 20)

#### *Texas Association of Community Colleges*

Oriano, Angela, Executive Director, Texas Success Center

#### *Texas Higher Education Coordinating Board*

Kramer, Kristen, Senior Director College Readiness and Success Initiatives

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

\* Name and contact information of the person submitting the application;

\* Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

\* Name and contact information of the person being nominated for membership; and

\* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for exemptions relating to HB 5 college prep courses. Comments and applications for membership of the committee must be submitted by March 17, 2014 to:

Linda Battles, Associate Commissioner/Chief of Staff

Texas Higher Education Coordinating Board

P.O. Box 12788 Austin, TX 78711 or

Linda.Battles@thehb.state.tx.us.

TRD-201400888

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 26, 2014



Notice of Intent to Engage in Negotiated Rulemaking - Primary Care Innovation Grant Program (Public Health-Related Institutions, Baylor College of Medicine, and Medical Associations)

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the Primary Care Innovation Grant Program allocation methodology for health-related institutions of higher education and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents of public health-related institutions and Baylor College of Medicine, and medical associations, soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative.

From this effort, eight individuals responded (out of approximately 19 affected entities) and expressed an interest to participate or nominated someone to participate on the negotiated rulemaking committee for the Primary Care Innovation Grant Program. The positions held by the volunteers and nominees includes Physicians, Department Chairs, Directors, Professors, and Deans. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for the Primary Care Innovation Grant Program:

- 1) Public Health-related Institutions;
- 2) Baylor College of Medicine;
- 3) Medical Associations; and
- 4) The Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 8 individuals to the negotiating rulemaking committee for the Primary Care Innovation Grant Program to represent affected parties and the agency:

*Baylor College of Medicine*

Nelson, Elizabeth A., Senior Associate Dean of Medical Education  
*Practicing Physician*

Bias, Travis, Physician at Parkway Primary Care, Pflugerville  
*Public Health-Related Institutions*

Cook, Ron, Associate Professor, Texas Tech University Health Sciences Center

Donovan, Lawrence J., Vice Dean for the Round Rock Campus College of Medicine, Texas A&M University Health Science Center

Filipetto, Frank, Chairman and Associate Professor Family Medicine, University of North Texas Health Science Center

Thompson, Barbara L., Professor and Chair Department of Family Medicine, The University of Texas Medical Branch at Galveston

*Medical Associations*

Nelson, Jonathan, Director of Communications, Texas Academy of Family Physicians

*Texas Higher Education Coordinating Board*

Silverman, Stacey, Deputy Assistant Commissioner, Universities and Health-Related Institutions

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

- \* Name and contact information of the person submitting the application;
- \* Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;
- \* Name and contact information of the person being nominated for membership; and
- \* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the Primary Care Innovation Grant Program. Comments and applications for membership of the committee must be submitted by March 17, 2014 to:

Linda Battles, Associate Commissioner/Chief of Staff

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, TX 78711 or

Linda.Battles@thehb.state.tx.us.

TRD-201400889

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 26, 2014



Notice of Intent to Engage in Negotiated Rulemaking - Resident Physician Expansion Program (Public Health-Related Institutions, Baylor College of Medicine, and Texas Health and Human Services Commission)

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the Resident Physician Expansion Program allocation methodology for health-related institutions of higher education and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents of public health-related institutions and Baylor College of Medicine, the Texas Health and Human Services Commission Executive Commissioner, and medical associations soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative.

From this effort, 13 individuals responded (out of approximately 19 affected entities) and expressed an interest to participate or nominated

someone to participate on the negotiated rulemaking committee for the Resident Physician Expansion Program. The positions held by the volunteers and nominees includes Physicians, Professors, Deans, Directors, Program Directors, and Vice Presidents. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for the Resident Physician Expansion Program:

- 1) Public Health-related Institutions;
- 2) Baylor College of Medicine;
- 3) Texas Health and Human Services Commission; and
- 4) The Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 11 individuals to the negotiating rulemaking committee for the Resident Physician Expansion Program to represent affected parties and the agency:

*Baylor College of Medicine*

Andrews, Linda B., Senior Associate Dean for Graduate Medical Education

*Public Health-Related Institutions*

Bates, J. Edward, Senior Director of Graduate Medical Education, Texas Tech University Health Sciences Center

Blackwell, Thomas A., Associate Dean for Graduate Medical Education, The University of Texas Medical Branch at Galveston

Bodurka, Diane C., Vice President Medical Education, The University of Texas MD Anderson Cancer Center

Dodge, Courtney, Assistant Dean College of Medicine, Texas A&M University Health Science Center

Kallur, Ravi, Senior Vice President for Education, Baylor Scott & White Health

Marple, Bradley F., Associate Dean for Graduate Medical Education, The University of Texas Southwestern Medical Center

Nash, Lisa, Associate Dean Educational Programs, University of North Texas Health Science Center

Pederson, Jay Travis, GME Manager of Finance and Administration, The University of Texas Health Science Center San Antonio

Tompkins, Robert B., Associate Professor of Medicine and Program Director for Family Medicine Residency Program, The University of Texas Health Northeast

*Texas Higher Education Coordinating Board*

Silverman, Stacey, Deputy Assistant Commissioner, Universities and Health-Related Institutions

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

\* Name and contact information of the person submitting the application;

\* Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

\* Name and contact information of the person being nominated for membership; and

\* Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the Resident Physician Expansion Program. Comments and applications for membership of the committee must be submitted by March 17, 2014 to:

Linda Battles, Associate Commissioner/Chief of Staff

Texas Higher Education Coordinating Board

P.O. Box 12788 Austin, TX 78711 or

Linda.Battles@theccb.state.tx.us.

TRD-201400890

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: February 26, 2014



## Texas Department of Insurance

### Company Licensing

Application to change the name of MONUMENTAL LIFE INSURANCE COMPANY to TRANSAMERICA PREMIER LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Cedar Rapids, Iowa.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201400887

Norma Garcia

Chief Clerk

Texas Department of Insurance

Filed: February 26, 2014



## Texas Lottery Commission

### Instant Game Number 1602 "One Million Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1602 is "ONE MILLION CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1602 shall be \$20.00 per Ticket.

1.2 Definitions in Instant Game No. 1602.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, GOLD BAR SYMBOL, MONEYBAG SYMBOL, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$1MILL.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1602 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
GOLD BAR SYMBOL	DOUBLE
MONEYBAG SYMBOL	WINX10
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$1MILL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1602), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1602-0000001-001.

K. Pack - A Pack of "ONE MILLION CASH" Instant Game Tickets contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

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 "ONE MILLION CASH" Instant Game No. 1602 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 "ONE MILLION CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 55 (fifty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "GOLD BAR" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a "MONEYBAG" Play Symbol, the player WINS 10 TIMES the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 55 (fifty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 55 (fifty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.



- B. No more than four matching non-winning Prize Symbols on a Ticket.
- C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.
- D. No matching WINNING NUMBERS Play Symbols on a Ticket.
- E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.
- F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.
- G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).
- H. The "GOLD BAR" (doubler) and "MONEYBAG" (win x 10) Play Symbols will only appear as dictated by the prize structure.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "ONE MILLION CASH" Instant Game prize of \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ONE MILLION CASH" Instant Game prize of \$1,000, \$5,000, \$10,000 or \$1,000,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ONE MILLION CASH" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

- 1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:
  - a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
  - b. in default on a loan made under Chapter 52, Education Code; or
  - c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "ONE MILLION CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "ONE MILLION CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1602. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1602 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	1,200,000	5.00
\$50	840,000	7.14
\$100	59,500	100.84
\$200	30,000	200.00
\$500	7,250	827.59
\$1,000	1,800	3,333.33
\$5,000	500	12,000.00
\$10,000	16	375,000.00
\$1,000,000	4	1,500,000.00

\*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 2.80. 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. 1602 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. 1602, 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-201400777

Bob Biard

General Counsel

Texas Lottery Commission

Filed: February 20, 2014



**Instant Game Number 1617 "Money Money Millionaire"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 1617 is "MONEY MONEY MILLIONAIRE". The play style is "key number match".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 1617 shall be \$20.00 per Ticket.

**1.2 Definitions in Instant Game No. 1617.**

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, GOLD BAR SYMBOL, DIAMOND SYMBOL, \$20.00, \$25.00, \$50.00, \$100, \$200, \$500, \$1,000, \$5,000, \$10,000, and \$ONE MILL.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1617 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
GOLD BAR SYMBOL	WIN
DIAMOND SYMBOL	WINX10
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND

\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$10,000	10 THOU
\$ONE MILL	ONE MIL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$200, or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000, or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1617), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1617-0000001-001.

K. Pack - A Pack of "MONEY MONEY MILLIONAIRE" Instant Game Tickets contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

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 "MONEY MONEY MILLIONAIRE" Instant Game No. 1617 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 "MONEY MONEY MILLIONAIRE" Instant Game is determined once the latex on the Ticket is scratched off to expose 55 (fifty-five) Play Symbols. The player must scratch the play area to reveal 5 WINNING NUMBERS and 25 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "GOLD BAR" Play Symbol, the player wins the prize for that symbol. If a player reveals a "DIAMOND" Play Symbol, the player WINS 10 TIMES the prize for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 55 (fifty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 55 (fifty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 55 (fifty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 55 (fifty-five) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. No more than four matching non-winning Prize Symbols on a Ticket.

C. The top Prize Symbol will appear at least once on every Ticket unless restricted by other parameters, play action or prize structure.

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

H. The "DIAMOND" (WIN X 10) Play Symbol will only appear as dictated by the prize structure.

I. The "GOLD BAR" (WIN) Play Symbol will never appear more than once on a Ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MONEY MILLIONAIRE" Instant Game prize of \$20.00, \$25.00, \$50.00, \$100, \$200, or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$200, or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MONEY MILLIONAIRE" Instant Game prize of \$1,000, \$5,000, \$10,000 or \$1,000,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be

made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MONEY MILLIONAIRE" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MONEY MONEY MILLIONAIRE" 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 "MONEY MONEY MILLIONAIRE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel

as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose

signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1617. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1617 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	960,000	6.25
\$25	240,000	25.00
\$50	720,000	8.33
\$100	112,500	53.33
\$200	25,500	235.29
\$500	6,000	1,000.00
\$1,000	1,600	3,750.00
\$5,000	550	10,909.09
\$10,000	20	300,000.00
\$1,000,000	5	1,200,000.00

\*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 2.90. 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. 1617 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. 1617, 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-201400778

Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 20, 2014



Instant Game Number 1633 "Twisted Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1633 is "TWISTED BINGO". The play style for the game is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1633 shall be \$3.00 per Ticket.

1.2 Definitions in Instant Game No. 1633.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32,

33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1633 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	



G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
G60	
O61	
O62	
O63	
O64	
O65	
O66	
O67	
O68	
O69	
O70	
O71	
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65	
66	
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72	
73	
74	
75	
FREE	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$150, \$250 or \$500.

H. High-Tier Prize - A prize of \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1633), 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: 1633-0000001-001.

K. Pack - A Pack of "TWISTED BINGO" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TWISTED BINGO" Instant Game No. 1633 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "TWISTED BINGO" Instant Game is determined once the latex on the Ticket is scratched off to expose 127 (one hundred twenty-seven) Play Symbols. The player must scratch off the "CALLER'S CARD" area to reveal 27 (twenty-seven) Bingo Numbers. The player must scratch only those Bingo Numbers on the four (4) "BINGO" Cards that match the Bingo Numbers on the "CALLER'S CARD". The player must also scratch the "FREE" spaces on the four (4) "BINGO" Cards. If the player matches all Bingo Numbers in a complete vertical, horizontal or diagonal line; all numbers in all four (4) corners; all numbers to complete an "X" [eight (8) numbers plus the

"FREE" space]; or all numbers contained in the pink "SIDEWAYS W" pattern on the same "BINGO" Card, the player wins the prize in the corresponding prize legend for that "BINGO" Card. Note: Only one prize per Card. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 127 (one hundred twenty-seven) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 127 (one hundred twenty-seven) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 127 (one hundred twenty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 127 (one hundred twenty-seven) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Texas 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 four (4) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play Symbol patterns. Two (2) Tickets have identical Play Symbol patterns if they have the same Play Symbols in the same positions.

C. No individual "BINGO" Card will win more than one (1) prize (i.e., only highest prize paid per card).

D. All "BINGO" Cards will be different on a Ticket. Two cards are identical if and only if they have the same Play Symbols in the same positions.

E. "CALLER'S CARD" Play Symbols will all be different.

F. All Tickets will have all of the "CALLER'S CARD" Play Symbols reveal a number in at least one "BINGO" Card.

G. There will be one (1) "FREE" Play Symbol fixed in the center of each "BINGO" Card.

H. The number range used for each letter (B, I, N, G, O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60), O (61-75).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "TWISTED BINGO" Instant Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$150, \$250 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay \$25.00,

\$50.00, \$100, \$150, \$250 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "TWISTED BINGO" Instant Game prize of \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TWISTED BINGO" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "TWISTED BINGO" Instant Game, the Texas Lottery shall deliver to an adult mem-

ber of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "TWISTED BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in 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 16,200,000 Tickets in the Instant Game No. 1633. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1633 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	2,073,600	7.81
\$5	1,684,800	9.62
\$10	388,800	41.67
\$15	129,600	125.00
\$20	129,600	125.00
\$25	94,770	170.94
\$50	54,000	300.00
\$100	20,250	800.00
\$150	4,725	3,428.57
\$250	1,080	15,000.00
\$500	270	60,000.00
\$50,000	16	1,012,500.00

\*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 3.54. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1633 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. 1633, 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-201400869  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 25, 2014



Instant Game Number 1635 "Loteria™"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1635 is "LOTERIA™". The play style is "row/column".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1635 shall be \$3.00 per Ticket.

1.2 Definitions in Instant Game No. 1635.

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: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE

CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE SYMBOL, THE UMBRELLA SYMBOL, THE CELLO SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL 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. 1635 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE CELLO SYMBOL	THE CELLO
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

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 \$3.00, \$4.00, \$7.00, \$10.00, \$17.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$33.00, \$50.00, \$80.00 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1635), 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: 1635-0000001-001.

K. Pack - A Pack of "LOTERIA™" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (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 "LOTERIA™" Instant Game No. 1635 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 "LOTERIA™" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 30 (thirty) Play Symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA™ CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA™ CARD to win the prize for that line. El jugador raspa las CARTAS DEL GRITON para revelar 14 símbolos. El jugador raspa solamente los símbolos en la CARTA de LOTERIA™ que son iguales a los símbolos revelados en las CARTAS DEL GRITON para revelar un frijol. El jugador revela 4 frijoles en cualquier línea completa horizontal o vertical en la CARTA de LOTERIA™ para ganar el premio para esa línea. 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 30 (thirty) 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 30 (thirty) 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 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 (thirty) 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 Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. A Ticket may win up to three (3) times per the prize structure.

C. No adjacent Tickets will contain identical CALLER'S CARD Play Symbols in exactly the same locations.

D. No matching Play Symbols in the CALLER'S CARD play area.

E. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

F. At least 8, but no more than 12, CALLER'S CARD Play Symbols will match a symbol on the LOTERIA™ CARD on a Ticket.

G. There will be no matching Play Symbols on a LOTERIA™ CARD as indicated in the artwork section.

H. Each LOTERIA™ CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA™" Instant Game prize of \$3.00, \$4.00, \$7.00, \$10.00, \$17.00, \$20.00, \$30.00, \$33.00, \$50.00, \$80.00 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 required, to pay a \$30.00, \$33.00, \$50.00, \$80.00 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 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 "LOTERIA™" Instant Game prize of \$3,000 or \$50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA™" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LOTERIA™" 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 "LOTERIA™" 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 20,160,000 Tickets in the Instant Game No. 1635. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1635 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	2,822,400	7.14
\$4	604,800	33.33
\$7	537,600	37.50
\$10	336,000	60.00
\$17	336,000	60.00
\$20	336,000	60.00
\$30	33,600	600.00
\$33	16,800	1,200.00
\$50	15,960	1,263.16
\$80	13,440	1,500.00
\$300	10,080	2,000.00
\$3,000	300	67,200.00
\$50,000	40	504,000.00

\*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 3.98. 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. 1635 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. 1635, 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-201400870  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 25, 2014

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**Texas Parks and Wildlife Department**  
 Notice of Proposed Real Estate Transaction  
 Chinati Mountains State Natural Area - Presidio County

In a meeting on March 27, 2014, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acceptance of a donation of approximately 20 acres of land in Presidio County as an addition to the Chinati Mountains State Natural Area. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action.

The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at [corky.kuhlmann@tpwd.texas.gov](mailto:corky.kuhlmann@tpwd.texas.gov) or through the Texas Parks and Wildlife Department web site at [tpwd.texas.gov](http://tpwd.texas.gov).

TRD-201400774  
 Ann Bright  
 General Counsel  
 Texas Parks and Wildlife Department  
 Filed: February 19, 2014

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**Texas Board of Physical Therapy Examiners**  
 Correction of Error

The Texas Board of Physical Therapy Examiners proposed amendments to 22 TAC §329.3, regarding Temporary Licensure for Examination Candidates, in the February 14, 2014, issue of the *Texas Register* (39 TexReg 864). The word "notarized" should have been included in

§329.3(a)(3) and shown as language to be deleted. The corrected rule text reads as follows:

(3) submit [notarized] temporary supervision affidavits as provided by the board; and

TRD-201400881

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## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on February 19, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42255.

The requested amendment is to expand the service area footprint to include the city limits of Victoria, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42255.

TRD-201400854

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 24, 2014

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### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on February 21, 2014, to amend a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of BCI Allegiance, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42262.

Applicant seeks to amend its SICFA to reflect a name change. Applicant stated that effective January 6, 2014, it changed its name from BCI Allegiance, LLC to Vyve Broadband A, LLC.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42262.

TRD-201400865

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 24, 2014

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on February 21, 2014, to amend a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of BCI James Cable, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42263.

Applicant seeks to amend its SICFA for a name change and expansion of service area footprint. Applicant stated that effective January 6, 2014, it changed its name from BCI James Cable, LLC to Vyve Broadband J, LLC. In addition, Applicant seeks to expand its service area footprint to include all the territory with the city limits of Springtown, Texas in Parker County, all of the territory in Parker County within 2 miles of the city limits of Springtown, Texas, and all of the territory within the city limits of Alvord, Texas in Wise County.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42263.

TRD-201400866

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: February 24, 2014

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### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (the commission) on February 20, 2014, pursuant to the Public Utility Regulatory Act (PURA), Tex. Util. Code Ann. §39.158 (West 2007 & Supp. 2013).

Docket Style and Number: Application of MidAmerican Geothermal, LLC, pursuant to Section 39.158 of the Public Utility Regulatory Act, Docket Number 42258.

The Application: MidAmerican Geothermal, LLC (MidAmerican) seeks approval of its acquisition from TransAlta (CE GEN) Investment USA Inc. (TransAlta) of the 50 percent membership interest of TransAlta in CE Generation, LLC (CE Generation), which in turn owns Power Resources, Ltd. (Power Resources), a power generation company registered with the Commission.

Power Resources owns a 219 MW natural gas-fired cogeneration facility in Big Spring, Texas, and is interconnected in the Electric Reliability Council of Texas (ERCOT) power region. Following the close of the transaction, CE Generation will be 100 percent owned by MidAmerican.

MidAmerican is required to obtain Commission approval before closing the transaction if the electricity to be offered for sale in the relevant power region will exceed one percent of the total electricity for sale in the relevant power region. MidAmerican states that its installed generation capacity in ERCOT following the close of this transaction will be 219 MW, or less than 20 percent of the total installed generation capacity located in, or capable of delivering electricity to, ERCOT. MidAmerican also states that even if installed generation capacity attributable to MidAmerican in power regions outside of ERCOT were conservatively assumed to fully utilize the asynchronous direct current

interconnections between ERCOT and other regions, and if the generation capacity of a joint venture transmission affiliate was included, the installed generation capacity attributable to MidAmerican following close of the transaction for that calculation would still be less than 20 percent of the total installed generation capacity located in, or capable of delivering electricity to, ERCOT.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible, as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 42258.

TRD-201400864  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 24, 2014



#### Notice of Petition for Restoration of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 19, 2014, for restoration of Universal Service Funding pursuant to Public Utility Regulatory Act, §56.025 and P.U.C. Substantive Rule §26.406.

Docket Style and Number: Application of Southwest Arkansas Telephone Cooperative, Inc. to Recover Funds From the Texas Universal Service Fund Pursuant to P.U.C. Substantive Rule §26.406, Docket Number 42254.

The Application: Southwest Arkansas Telephone Cooperative, Inc. (Southwest Arkansas Telephone) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Southwest Arkansas Telephone. The application requests that the commission allow Southwest Arkansas Telephone recovery of funds from the TUSF in the amount of \$83,468.36 for 2012, 2013, and 2014, to replace projected FUSF revenue reductions. Southwest Arkansas Telephone is not seeking any rate increases through this proceeding.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42254.

TRD-201400853  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 24, 2014



#### San Antonio-Bexar County Metropolitan Planning Organization

#### Request for Proposals - Regional Bicycle and Pedestrian Planning Study

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct a Regional Bicycle and Pedestrian Planning Study.

A copy of the Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from the MPO's website at [www.sametroplan.org](http://www.sametroplan.org) or calling Jeanne Geiger, Deputy Director, at (210)-227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CT), Wednesday, April 9, 2014, at the MPO office to:

Isidro "Sid" Martinez  
Director  
San Antonio-Bexar County MPO  
825 S. St. Mary's Street  
San Antonio, Texas 78205

Funding for this study, in the amount of \$275,000, is contingent upon the availability of federal transportation planning funds.

TRD-201400816  
Jeanne Geiger  
Deputy Director  
San Antonio-Bexar County Metropolitan Planning Organization  
Filed: February 24, 2014



#### Texas Department of Transportation

#### Notice of Extension of the Public Comment Period - United States Highway 181 Harbor Bridge in Nueces County

On January 3, 2014, a Notice of Availability of the Draft Environmental Impact Statement/Section 4(f) Evaluation for the Harbor Bridge Project in Nueces County was published in the January 3, 2014, issue of the *Texas Register* (39 TexReg 151). The proposed project includes the replacement of the Harbor Bridge and the reconstruction of portions of US 181, I-37, and the Crosstown Expressway in the City of Corpus Christi.

A public hearing for the project was held on February 18, 2014. While the public comment period concerning the Draft Environmental Impact Statement/Section 4(f) Evaluation was originally scheduled to close on March 3, 2014, the department has extended the period so that the deadline to submit public comment is now March 18, 2014.

Materials from the hearing are available on the project website at [www.ccharborbridgeproject.com](http://www.ccharborbridgeproject.com). The Draft Environmental Impact Statement/Section 4(f) Evaluation is available for review on the project website and at the following locations:

- 1) La Retama Central Library, 805 Comanche Street, Corpus Christi, TX 78401;
- 2) Oveal Williams Senior Center, 1414 Martin Luther King Drive, Corpus Christi, TX 78401;
- 3) TxDOT District Office, 1701 S. Padre Island Drive, Corpus Christi, TX 78416; and
- 4) Solomon Ortiz Center, 402 Harbor Drive, Corpus Christi, TX 78401.

Written comments may be mailed to Christopher Amy at 1701 South Padre Island Drive, Corpus Christi, TX 78416, submitted online at [www.ccharborbridgeproject.com](http://www.ccharborbridgeproject.com), or submitted via email at [Harbor-BridgeDEIS@urs.com](mailto:Harbor-BridgeDEIS@urs.com). Written comments submitted electronically or

mailed and post marked between January 3, 2014, and March 18, 2014, will be accepted as part of the official public hearing record.

For additional information, contact Christopher Amy, Texas Department of Transportation, 1701 S. Padre Island Drive, Corpus Christi, Texas 78416. Mr. Amy's phone number is (361) 739-6960.

TRD-201400892  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: February 26, 2014



#### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and 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](http://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings); or visit [www.txdot.gov](http://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) 416-4500 or 1-800-68-PILOT.

TRD-201400871  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: February 25, 2014



#### Request for Qualifications - State Highway 360

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 (RFQ) and requires the department to publish a notice advertising the issuance of a RFQ in the *Texas Register* and on the department's Internet website.

The Texas Transportation Commission (commission) adopted 43 TAC 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 RFQ.

The commission has authorized the issuance of a RFQ to design, construct, and maintain State Highway 360 from just south of I-20 to US 287 in Tarrant, Ellis, and Johnson counties. The State Highway 360 project includes the design, construction, and, at the department's election, maintenance of approximately 9.2 miles of improvements consisting of two toll lanes in each direction from approximately E. Sublett Road/Camp Wisdom Road to East Broad Street and one toll lane

in each direction with periodic passing lanes (Super 2 configuration) from East Broad Street to US 287, in addition to frontage road and intersection improvements, pursuant to a Design-Build Agreement and a Comprehensive Maintenance Agreement.

The purpose of the project is to add toll lanes and frontage road improvements to extend the existing State Highway 360 main lanes and frontage roads from just south of I-20 to US 287. The department has concluded that harnessing private-sector creativity through a design-build approach is the best way to ensure cost-effective and expedited delivery of this project and provide needed safety improvements, congestion relief and economic development benefits to the public. This notice represents the next step in the procurement process.

Through this notice, the department is seeking qualifications submittals from teams interested in entering into a Design-Build Agreement and Comprehensive Maintenance Agreement. The department intends to evaluate any qualifications submittals received in response to the RFQ and may request submission of detailed proposals, potentially leading to negotiation, award, and execution of a Design-Build Agreement and Comprehensive Maintenance Agreement. The department will accept for consideration any qualifications submittals received in accordance with the enabling legislation, the rules, and the RFQ on or before the deadline in the RFQ. The department anticipates issuing the RFQ, receiving and analyzing the qualifications submittals, 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 Agreement and Comprehensive Maintenance Agreement for the project.

**RFQ Evaluation Criteria.** Qualifications submittals will be evaluated by the department for shortlisting purposes using the following general criteria: (i) qualifications and experience of the proposer, its individual team members, and its key personnel in developing, designing, fabricating, constructing, and/or maintaining comparable projects, (ii) statement of technical approach, and (iii) safety qualifications, including the strength of the proposer's and individual team members' safety records and practices, and understanding of an effective safety program. 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 March 7, 2014. Copies of the RFQ will be available at the department's Dallas/Fort Worth (DFW) Strategic Projects Office located at 4777 E. Highway 80, Mesquite, TX 75150, and on the following project webpage:

[www.txdot.gov/business/partnerships/current-cda/sh-360/sh360-rfq.html](http://www.txdot.gov/business/partnerships/current-cda/sh-360/sh360-rfq.html).

Qualifications submittals will be due at 3:00 p.m. on May 30, 2014, at the address specified in the RFQ.

TRD-201400893  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: February 26, 2014



#### Sam Houston State University

Notice of Award - Consulting Contract

RFP 753-14-34292JEB

Sam Houston State University is issuing an award notice for a consultant to provide Business Continuity Consultant Services. The Consul-

tant shall provide the development of a Business Continuity Plan. The consultant operates under the supervision and oversight of Sam Houston State University.

Description of Services:

The Consultant shall develop a Business Continuity Plan (BCP). The BCP is a comprehensive emergency plan which serves to ensure the continued performance of Sam Houston State University's mission-critical functions. The BCP requires detailed readiness planning and must:

- \* Plan for the safety of personnel, visitors, equipment, etc.
- \* Identify mission-critical functions and plan their continued performance.
- \* Outline an orderly response and timely recovery from an incident.
- \* Assure statutory and regulatory compliance: Texas Administrative Code - Title 1, Part 10, Chapter 202, Subchapter C, §202.74 - Business Continuity Planning and §202.24 - Managing Security Risks; Texas Labor Code, §412.054; FEMA's Continuity Guidance Circulars 1 and 2, Texas Continuity Plan Crosswalk
- \* Be operational within 12 hours after activation and maintain operations up to 30 days.
- \* Plan for off-site operations and effective communication.
- \* Contain a disaster recovery plan.

Name of Consultant:

Tidal Basin Government Consulting LLC  
300 N Washington St. Ste. 505  
Alexandria, Virginia 22314

Duration of Contract and Award Amount:

February 24, 2014 - August 22, 2014

\$53,833.14

TRD-201400879  
Rhonda Beassie  
General Counsel  
Sam Houston State University  
Filed: February 25, 2014

**Texas State University System**

Notice of Award - Outside Consultant or Executive Search Firm

The Texas State University System (TSUS) announces this Notice of Contract Award in connection with the Request for Qualifications/Proposals (RFP #758-14-00022) inviting professional consultants experienced in providing Executive Search services (particularly institutions of higher education) to assist the TSUS institution, Sul Ross State University in Alpine, Texas.

TSUS announces that a contract was awarded to AGB Search, 1133 20th Street, NW, Suite 300, Washington, DC 75205. The amount and term of the contract is dependent upon the expenses involved in conduct of the time required to complete the search.

The Notice of Request for Proposals (RFP #758-14-00022) was published in the December 13, 2013, issue of the *Texas Register* (38 TexReg 9153).

TRD-201400810

Perry D. Moore  
Vice Chancellor for Academic Affairs  
Texas State University System  
Filed: February 21, 2014

**Upper Rio Grande Workforce Development Board**

Request for Proposals - Legal Services

PY14-RFP-200-814

The Upper Rio Grande Workforce Development Board (Board) is soliciting proposals from qualified organizations to provide Legal Services, RFP PY14-RFP-200-814. Beginning on February 18, 2014, a copy of the RFP may be obtained from Board's office or Board's Web Site at [www.urgjobs.com](http://www.urgjobs.com) under the Contractors & Vendors section. The Board's address is 300 E. Main Suite 800, El Paso, Texas 79901.

Respondents are encouraged to submit a notice of intent to respond via email at: [procurement@urgjobs.org](mailto:procurement@urgjobs.org). The proposal submission deadline is Thursday, March 13, 2014, by 5:00 p.m. MST. Please submit questions via email to [procurement@urgjobs.org](mailto:procurement@urgjobs.org).

Verbal questions of any kind (in person or by telephone) will NOT be accepted.

TRD-201400878  
Joseph G. Sapien  
Project Manager  
Upper Rio Grande Workforce Development Board  
Filed: February 25, 2014

# Open Meetings

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

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

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

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

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

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

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

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

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

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

## 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 39 (2014) is cited as follows: 39 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 “39 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 39 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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**\*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.

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