

---

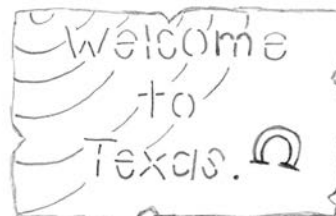
# TEXAS REGISTER

Volume 39 Number 25

June 20, 2014

Pages 4709 - 4832

---



Leslie Gallegos  
7th 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.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

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

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



a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.texas.gov](mailto:register@sos.texas.gov)

**Secretary of State –**  
Nandita Berry

**Director –** Dan Procter

**Staff**

Leti Benavides  
Dana Blanton  
Jeana Bores  
Elaine Crease  
Kris Hogan  
Jill S. Ledbetter  
Laura Limas  
Barbara Strickland  
Mirand Zepeda

# IN THIS ISSUE

## **GOVERNOR**

Appointments.....	4713
Proclamation 41-3373.....	4714
Proclamation 41-3374.....	4714
Proclamation 41-3375.....	4715
Proclamation 41-3376.....	4715
Proclamation 41-3377.....	4715

## **ATTORNEY GENERAL**

Requests for Opinions.....	4717
Opinions.....	4717
Open Records Decision.....	4718

## **PROPOSED RULES**

### **TEXAS DEPARTMENT OF AGRICULTURE**

#### WEIGHTS AND MEASURES

4 TAC §12.60.....	4719
-------------------	------

### **TEXAS ANIMAL HEALTH COMMISSION**

#### ENTRY REQUIREMENTS

4 TAC §51.8, §51.14.....	4719
--------------------------	------

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### ADMINISTRATION

10 TAC §1.20.....	4724
10 TAC §1.206.....	4724

#### UNIFORM MULTIFAMILY RULES

10 TAC §10.1004.....	4725
----------------------	------

### **TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### STATE RECORDS

13 TAC §§6.3, 6.4, 6.6.....	4726
-----------------------------	------

#### LOCAL RECORDS

13 TAC §7.125.....	4728
--------------------	------

### **PUBLIC UTILITY COMMISSION OF TEXAS**

#### SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

16 TAC §§26.403 - 26.405.....	4728
-------------------------------	------

### **TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM**

#### CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.2.....	4732
--------------------	------

### **TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

## GENERAL PROVISIONS

37 TAC §151.21.....	4733
---------------------	------

## CORRECTIONAL INSTITUTIONS DIVISION

37 TAC §152.71.....	4734
---------------------	------

## SPECIAL PROGRAMS

37 TAC §159.9.....	4735
--------------------	------

## COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.35.....	4735
---------------------	------

## **WITHDRAWN RULES**

### **TEXAS ALCOHOLIC BEVERAGE COMMISSION**

#### MARKETING PRACTICES

16 TAC §45.117.....	4739
---------------------	------

### **TEXAS REAL ESTATE COMMISSION**

#### PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.53.....	4739
---------------------	------

## **ADOPTED RULES**

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### REIMBURSEMENT RATES

1 TAC §355.7001.....	4741
1 TAC §355.8081.....	4741
1 TAC §355.8085.....	4742

### **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

#### ADMINISTRATION

10 TAC §1.5.....	4742
10 TAC §1.24.....	4742

#### COMMUNITY AFFAIRS PROGRAMS

10 TAC §5.23.....	4743
-------------------	------

### **PUBLIC UTILITY COMMISSION OF TEXAS**

#### SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

16 TAC §25.53.....	4746
16 TAC §25.362.....	4750
16 TAC §25.272.....	4753

### **TEXAS EDUCATION AGENCY**

#### SCHOOL DISTRICTS

19 TAC §61.1023.....	4763
----------------------	------

#### ASSESSMENT

19 TAC §101.3041.....	4766	Notice of Water Quality Applications.....	4793
<b>TEXAS BOARD OF PROFESSIONAL LAND SURVEYING</b>		Notice of Water Rights Application.....	4795
GENERAL RULES OF PROCEDURES AND PRACTICES		<b>Texas Ethics Commission</b>	
22 TAC §661.31.....	4767	List of Late Filers.....	4795
22 TAC §661.45, §661.52.....	4767	<b>Texas Facilities Commission</b>	
<b>GENERAL LAND OFFICE</b>		Request for Proposals #303-5-20454.....	4796
LAND RESOURCES		<b>General Land Office</b>	
31 TAC §§13.71 - 13.83.....	4768	Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program.....	4796
<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>		<b>Texas Health and Human Services Commission</b>	
FISHERIES		Public Notice.....	4797
31 TAC §57.1001.....	4768	<b>Texas Higher Education Coordinating Board</b>	
WILDLIFE		Notice of Intent to Engage in Negotiated Rulemaking B-On-Time (Tuition Set-Asides) (Public Universities and Health-Related Institutions Offering Baccalaureate Degrees).....	4797
31 TAC §65.103.....	4772	<b>Texas Department of Housing and Community Affairs</b>	
31 TAC §§65.132, 65.135, 65.136.....	4772	Notice of Public Hearings for the Low Income Home Energy Assistance Program State Application and Plan for Fiscal Year 2015...4798	
<b>RULE REVIEW</b>		<b>Texas Department of Insurance</b>	
<b>Proposed Rule Reviews</b>		Company Licensing.....	4798
Texas Department of Criminal Justice.....	4775	<b>Texas Lottery Commission</b>	
<b>TABLES AND GRAPHICS</b>		Instant Game Number 1592 "Fun 5's".....	4799
.....	4777	Instant Game Number 1615 "Cowboys".....	4804
<b>IN ADDITION</b>		Instant Game Number 1646 "Hot 'n Spicy Tripler".....	4809
<b>Cancer Prevention and Research Institute of Texas</b>		Instant Game Number 1648 "Loteria™".....	4813
Notification of Award.....	4781	Instant Game Number 1653 "\$100,000 Merry Money".....	4817
<b>Comptroller of Public Accounts</b>		<b>Public Utility Commission of Texas</b>	
Local Sales Tax Rate Change Notice Effective July 1, 2014.....	4781	Notice of Application to Amend Certificated Service Area Boundaries.....	4821
Notice of Contract Award.....	4781	Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171.....	4821
Notice of Contract Award.....	4782	<b>Supreme Court of Texas</b>	
<b>Office of Consumer Credit Commissioner</b>		<b>Texas Department of Transportation</b>	
Notice of Rate Ceilings.....	4782	Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services.....	4830
<b>Texas Commission on Environmental Quality</b>		<b>Sul Ross State University</b>	
Agreed Orders.....	4782	Request for Proposals.....	4831
Enforcement Orders.....	4786	<b>Texas State University System</b>	
Notice of District Hearings.....	4789	Notice of Request for Proposals - Risk Management and Insurance Consulting Services.....	4831
Notice of District Petition.....	4790	<b>Texas Water Development Board</b>	
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions.....	4790	Applications for June 18, 2014.....	4831
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions.....	4791		
Notice of Opportunity to Comment on Shutdown/Default Order of Administrative Enforcement Actions.....	4792		

# THE GOVERNOR

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

## Appointments

### Appointments for April 30, 2014

Appointed to the Governing Board of the Office of Violent Sex Offender Management for a term to expire February 1, 2015, Kathryn E. "Katie" McClure of Kingwood (replacing Daniel P. "Dan" Powers of Carrollton who resigned).

### Appointments for May 1, 2014

Appointed to the Public Safety Commission for a term to expire December 31, 2019, Faith S. Johnson of Cedar Hill (replacing Carin Marcy Barth of Houston whose term expired).

### Appointments for May 13, 2014

Appointed to the Texas Economic Development Corporation for a term at the pleasure of the Governor, Leslie L. Ward of Austin (replacing Jeffrey "Scott" Johnson of Frisco).

Designating Leslie L. Ward as presiding officer of the Texas Economic Development Corporation for a term at the pleasure of the Governor. Ms. Ward is replacing J. Bruce Bugg, Jr. of San Antonio as presiding officer.

### Appointments for May 15, 2014

Appointed to the North Central Texas Regional Review Committee for a term at the pleasure of the Governor, James Lynn Deaver of Tolar (replacing Jerry M. Wimpee of Rockwall).

### Appointments for May 22, 2014

Appointed to the South Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Humberto R. Gonzalez of Hebronville (replacing Guadalupe S. Canales of Hebronville).

Appointed to the South Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Linda Jo G. Soliz of Hebronville (replacing Tony Flores, Jr. of Hebronville).

Appointed to the Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Lois H. Van Beck of San Saba (replacing Gayla Hawkins of San Saba).

Appointed to the Central Texas Regional Review Committee for a term to expire at the pleasure of the Governor, Lloyd J. Huggins of Hico (replacing Jim Boatwright of Hamilton).

Appointed to the Middle Rio Grande Regional Review Committee for a term to expire at the pleasure of the Governor, Ramsey English Cantu of Eagle Pass (replacing Chad Foster, Sr. of Eagle Pass).

Appointed to the Middle Rio Grande Regional Review Committee for a term to expire at the pleasure of the Governor, Wright Andrew Barnebey of Rocksprings (replacing Nicolas Gallegos of Rocksprings).

Appointed as Chief Administrative Law Judge for a term to expire May 15, 2016, Lyn Cathleen Parsley of Austin (Judge Parsley is being reappointed).

Appointed to the Interagency Council for Genetic Services for a term to expire September 1, 2015, Cherry Sears of Sugar Land (replacing Kyle M. Jones of Marble Falls whose term expired).

Appointed to the Interagency Council for Genetic Services for a term to expire September 1, 2015, T. Craig Benson of Austin (Mr. Benson is being reappointed).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2019, Judith M. "Judy" Raab of Alvarado (replacing Jay Murphy of Houston whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2015, Marilou B. Fowler of Katy (replacing David A. Fowler of Katy who is deceased).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2015, Shawn P. Saladin of Edinburg (Dr. Saladin is being reappointed).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2015, Linda Millstone of Austin (replacing R.A. "Dick" Nugent of Nederland who resigned).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2015, Rames Gonzalez, Jr. of Palmview (replacing Daphne Brookins of Forest Hill whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2016, Heather C. Griffith-Dhanjal of Fort Worth (replacing Patricia A. Watson of Flower Mound whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2016, Phoebe "Faye" Kuo of Austin (replacing Kathy S. Strong of Garrison whose term expired).

### Appointments for May 23, 2014

Appointed to the Texas Economic Development Corporation for a term at the pleasure of the Governor, Kathryn Hall of Dallas (replacing J. Bruce Bugg, Jr. of San Antonio).

### Appointments for May 30, 2014

Appointed to the ARK-TEX Regional Review Committee for a term at the pleasure of the Governor, Kayla Francell Price of Sulphur Springs (replacing Chris Brown of Sulphur Springs).

Appointed to the Texas Emergency Services Retirement System for a term to expire September 1, 2019, Ronald V. Larson of Horizon City (reappointed).

Appointed to the Texas Emergency Services Retirement System for a term to expire September 1, 2019, Danny Key of Friendswood (reappointed).

Appointed to the Permian Basin Regional Review Committee for a term at the pleasure of the Governor, Larry McLellan of Big Spring (replacing Robert "Russ" McEwen of Big Spring).

Appointed to the Nortex Regional Review Committee for a term to expire at the pleasure of the Governor, Glenda "Gayle" Simpson of Crowell (replacing Daniel Manney of Crowell).

**Appointments for June 6, 2014**

Appointed to the Texas Funeral Service Commission for a term to expire February 1, 2017, Wesley "Scott" Smith of Murphy (replacing Patrick Wayne Robertson of Clarendon who resigned).

Appointed to the ARK-TEX Regional Review Committee for a term to expire at the pleasure of the Governor, Thomas J. Whitten, III of Texarkana (replacing John R. Addington of Texarkana).

Appointed to the ARK-TEX Regional Review Committee for a term to expire at the pleasure of the Governor, Alwin M. Benefield, Jr. of Queen City (replacing Albert R. Sirmans of Queen City).

Designating Lynda S. Munkres as presiding officer of the ARK-TEX Regional Review Committee for a term at the pleasure of the Governor. Judge Munkres is replacing John R. Addington of Texarkana as presiding officer.

Appointed to the Middle Rio Grande Regional Review Committee for a term to expire at the pleasure of the Governor, Ernest W. "Chip" King, III of Uvalde (replacing Cody Smith of Uvalde).

Appointed to the Middle Rio Grande Regional Review Committee for a term to expire at the pleasure of the Governor, Jesus Chavez of Cam-pwood (replacing Jesse Lee Pendley of Leakey).

Rick Perry, Governor

TRD-201402684



**Proclamation 41-3373**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, significantly low rainfall has resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

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

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

WHEREAS, this state of disaster includes the counties of Andrews, Archer, Armstrong, Bailey, Bandera, Baylor, Bell, Bexar, Blanco, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Gray, Grayson, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hill, Hockley, Hood, Hudspeth, Hunt, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lamar, Lamb, Lampasas, Lipscomb, Llano, Lubbock, Lynn, Martin, Mason, Matagorda, McCulloch, McLennan, Medina, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Randall, Reagan, Real, Red River,

Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise, Yoakum, Young and Zavala.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 11th day of April, 2014.

David Dewhurst, Lieutenant Governor as Acting Governor of Texas

TRD-201402685



**Proclamation 41-3374**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the City of El Paso has requested that I exercise executive authority to grant an emergency exception to the uniform election date requirements pursuant to Sections 41.001 and 41.0011, Texas Election Code, and to grant a request for a special election, pursuant to the city charter; and

WHEREAS, the City of El Paso has certified that the City has a vacancy for the City Council Representative, District 6, pursuant to the city charter; and

WHEREAS, the next available uniform election date is November 4, 2014; and

WHEREAS, the Texas uniform election dates law is intended to serve the interests of voters by allowing consolidation of elections onto a limited number of uniform dates, but the special circumstances as expressed by the City of El Paso suggest that the interests of voters would be better served in this unique case by permitting an earlier election on a non-uniform date; and

WHEREAS, the Governor of Texas is granted the discretion under Section 41.0011, Election Code, to declare an emergency warranting holding a special election before the appropriate uniform election date;

NOW THEREFORE I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Laws of the State of Texas, do hereby declare that the foregoing circumstances constitute an emergency, and, accordingly, I grant permission for the City of El Paso to conduct a special election on Saturday, July 19, 2014, for purposes of electing a City Council Representative, District 6, pursuant to the City of El Paso's city charter.

Should the City choose to exercise the City's authority to call an election pursuant to this proclamation, said election may be held on July 19, 2014, in accordance with law.

A copy of this order shall be mailed immediately to the City Council of the City of El Paso.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas this the 21st day of April, 2014.

Rick Perry, Governor  
TRD-201402686

◆ ◆ ◆  
Proclamation 41-3375

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

WHEREAS, significantly low rainfall has resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

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

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

WHEREAS, this state of disaster includes the counties of Andrews, Aransas, Archer, Armstrong, Atascosa, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Caldwell, Calhoun, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Hood, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, LaSalle, Lavaca, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Randall, Reagan, Real, Red River, Refugio, Roberts, Rockwall, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise, Yoakum, Young and Zavala.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 9th day of May, 2014.

Rick Perry, Governor  
TRD-201402687

◆ ◆ ◆  
Proclamation 41-3376

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby certify that the wildfires that started on May 11, 2014, have caused a disaster in Hutchinson County in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Hutchinson County based on the existence of such disaster and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of May, 2014.

Rick Perry, Governor  
TRD-201402688

◆ ◆ ◆  
Proclamation 41-3377

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the membership of the Texas State Senate in District No. 4, which consists of Chambers County and Jefferson County, and parts of Galveston County, Harris County, and Montgomery County; and

WHEREAS, the results of the special election held on Saturday, May 10, 2014, have been officially declared and no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.025(d) of the Texas Election Code requires a special runoff election to be held not earlier than the 70th or later than the 77th day after the date the final canvass is completed; and

WHEREAS, pursuant to Section 203.012(b) of the Texas Election Code, the final canvass occurred on May 23, 2014; and

WHEREAS, Section 3.003(a)(3) of the Texas Election Code requires the special runoff election to be ordered by proclamation of the governor;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in Senate District No. 4 on August 5, 2014, for the purpose of electing a state senator to serve out the unexpired term of The Honorable Tommy Williams.

Early voting by personal appearance shall begin on Monday, July 28, 2014, in accordance with Section 85.001(b), (c) of the Texas Election Code and shall end on Friday, August 1, 2014, in accordance with Section 85.001(b) of the Texas Election Code.

A copy of this order shall be mailed immediately to the county judges of all counties contained within Senate District No. 4, and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 4, and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of May, 2014.

Rick Perry, Governor

TRD-201402689





# THE ATTORNEY GENERAL

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

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

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

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

## Requests for Opinions

**RQ-1203-GA**

### Requestor:

The Honorable Craig Watkins

Dallas County Criminal District Attorney

411 Elm Street

Dallas, Texas 75202

Re: Authority of Dallas County, under Labor Code section 62.0515 and the County Purchasing Act, to require payment of a wage higher than the state-mandated minimum wage to employees of county contractors (RQ-1203-GA)

### Briefs requested by June 24, 2014

**RQ-1204-GA**

### Requestor:

Mr. Phil Adams

Chairman, Board of Regents

The Texas A&M University System

Post Office Box 15812

College Station, Texas 77841

Re: Authority of Texas A&M University to use available university funds received under article VII, section 18(f) of the Texas Constitution for programs of an A&M branch campus (RQ-1204-GA)

### Briefs requested by June 30, 2014

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

TRD-201402722

Katherine Cary

General Counsel

Office of the Attorney General

Filed: June 11, 2014



## Opinions

**Opinion No. GA-1064**

Mr. Michael Williams

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Application of the nepotism exception in Education Code subsection 11.1513(g) to a school district when the county's population increases to exceed 35,000 (RQ-1172-GA)

### S U M M A R Y

An independent school district may continue to employ an individual legally hired under the nepotism exception found in Education Code subsection 11.1513(g) after the population of the county in which the school district is located meets or surpasses 35,000.

### Opinion No. GA-1065

Mr. J. Winston Krause

Chair, Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether the Lottery Commission may deny or revoke an entity's bingo-related license based on the criminal history of an individual associated with that entity (RQ-1173GA)

### S U M M A R Y

Chapter 53 of the Occupations Code does not authorize the Lottery Commission to deny or revoke an entity's bingo-related license solely on the basis that an officer, director, or shareholder has been convicted or constructively convicted of an offense specified in section 53.021(a). The Legislature has chosen not to give the Commission the authority to revoke or deny an entity its license for the conviction of an individual required to be listed in the entity's application for an offense other than gambling, a gambling-related offense, or criminal fraud.

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

TRD-201402693

Katherine Cary

General Counsel

Office of the Attorney General

Filed: June 10, 2014



Open Records Decision

**Open Records Decision No. 688**

The Honorable John J. Specia, Jr.

Commissioner

Texas Department of Family and Protective Services

701 West 51st Street

Austin, Texas 78714-9030

Re: Questions concerning the applicability of section 552.1085 of the Government Code to information subject to certain rules of the Texas Department of Family and Protective Services (ORQ-73)

**S U M M A R Y**

The Legislature intended subsection 261.201(a) of the Family Code to govern the confidentiality and release of photographs in child abuse

and neglect case file records of the Texas Department of Family and Protective Services and, furthermore, did not intend sensitive crime scene photographs covered by subsection 261.201(a) to be subject to the general requirements of section 552.1085 of the Government Code.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov).*

TRD-201402725

Katherine Cary

General Counsel

Office of the Attorney General

Filed: June 11, 2014



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 12. WEIGHTS AND MEASURES SUBCHAPTER G. SERVICE TECHNICIANS

##### 4 TAC §12.60

The Texas Department of Agriculture (department) proposes an amendment to §12.60, concerning examination fees for service technicians licensed by the department to service and calibrate weighing and measuring devices.

The amendment is proposed to reduce examination fees from \$100 per class to \$60 per class, due to cost savings resulting from outsourcing service technician exams. The department has determined that contracting exam services through a proctored computer-based system will provide a greater convenience for service technicians at a lower cost by offering: 1) more testing locations throughout the state; 2) testing opportunities of at least five days per week; and 3) 24-hour online exam registration. Through outsourcing service technician exams, the department will be able to reduce expenditures during fiscal year 2014 below the amount appropriated for the purpose of administering service technician exams. As a direct result of this cost savings, the department is proposing an amendment to §12.60 to decrease fees for service technician exams by forty percent. Additionally, this amendment will comply with changes made to the weights and measures program by the 82nd Texas Legislature, which required that all of the costs of administering this program be entirely offset by revenue generated for the program, including other direct and indirect expenses, and has authorized the agency to collect fees accordingly.

Andria Perales, Coordinator for Weights and Measures, has determined for the first five-year period the proposed amendment is in effect, there will be fiscal implications for state government due to the decrease in fees collected. The estimated decrease in revenue is \$12,000 annually. There is no anticipated fiscal impact for local governments as a result of administering or enforcing the amendment as proposed.

Ms. Perales has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the proposed amendment will be having an examination fee for service technicians licensed by the department to service and calibrate weighing and measuring devices that is consistent with the costs of administering the program. There will be no additional costs to microbusinesses, small businesses, or individuals required to comply with

the proposed amendment. The proposed amendment reduces the examination fees for registered technicians from \$100 to \$60.

Comments on the proposal may be submitted to Andria Perales, Coordinator for Weights and Measures, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment to §12.60 is proposed under the Texas Agriculture Code, §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures and bring about uniformity between the standards established under Chapter 13 of the Texas Agriculture Code and the standards established by federal law; Texas Agriculture Code, §13.453, which provides the department with the authority to adopt rules for licensing service technicians and service companies, and rules necessary for the regulation of device maintenance activities; and Texas Agriculture Code, §13.457, which provides the department with the authority to set a fee for licensing of a service technician.

The code affected by the proposal is the Texas Agriculture Code, Chapter 13.

*§12.60. Registration Requirement and Procedure.*

(a) - (d) (No change.)

(e) Examination fees for each class of license is \$60 [~~\$100~~].

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 June 5, 2014.

TRD-201402640

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 20, 2014

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



### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 51. ENTRY REQUIREMENTS

##### 4 TAC §51.8, §51.14

The Texas Animal Health Commission (commission) proposes amendments to §51.8, concerning Cattle, and §51.14, concerning Swine, in Chapter 51, which is entitled "Entry Requirements."

The purpose of the amendments to §51.8 is to change the Bovine Trichomoniasis (Trichomoniasis) entry requirements. The Trichomoniasis control program is an industry driven initiative that was implemented in 2009. The concept includes an annual review by commission staff and interested stakeholder organizations of the program's rules and policies and subsequently suggesting non-binding recommendations to the commission. The Bovine Trichomoniasis Working Group (TWG) met on April 17, 2014, to evaluate the effectiveness of current rules. The TWG discussed the program overview to date, the management of infected herds, entry requirements, and ultimately discussed the need for possible revisions to the program. The TWG recommended adding two exemptions to the Trichomoniasis testing requirements for interstate movement of breeding bulls into Texas.

The first proposed new exemption is for breeding bulls that are moved directly to a facility that tests the gain and feed conversion of cattle (bull test stations) so long as the bulls are isolated from female cattle at all times. The second proposed exemption is for breeding bulls that originate from a herd that is enrolled in a certification program that is substantially similar, as determined by the Executive Director, to the Texas Certified Trichomoniasis Free Herd Program. Section 51.8(c)(1) and (2) is being amended and reorganized to account for the two new testing exemptions and to clarify existing provisions. The commission also proposes to change §51.8(c)(3) to reflect entry requirements for cattle entering the state from a foreign country rather than Mexico or from any other country that does not have an established Trichomoniasis testing program. The commission also proposes to delete §51.8(c)(4) because of the changes to the previous section and broader reference to a foreign country adequately addresses cattle entering from Canada or from any other country that does have an established Trichomoniasis testing program.

The purpose of the amendments to §51.14 is to establish health assurance for non-commercial swine entering Texas for purposes other than immediate slaughter. In those instances, the proposal will require accredited veterinarians to include a statement on certificates of veterinary inspection that the swine represented on the certificate have not originated from a premises known to be affected by Novel Swine Enteric Coronavirus Disease(s) (SECD) and have not been exposed to SECD within the last 30 days.

SECD is a disease in swine caused by emerging porcine coronaviruses, which includes but is not limited to porcine epidemic diarrhea virus (PEDv) and porcine delta coronavirus (PDCoV). SECD affects swine causing diarrhea, vomiting, and 50-100% mortality of infected piglets. The clinical presentation of SECD infections in growing pigs can be variable in its severity and not readily distinguishable from many other causes of diarrhea in growing pigs. While adult pigs can become infected, mortality is low. SECD is clinically indistinguishable from transmissible gastroenteritis (TGE), another swine disease caused by a coronavirus that is endemic in the United States.

The United States Department of Agriculture's (USDA) National Veterinary Services Laboratories (NVSL) confirmed the first PEDv diagnosis in the United States on May 17, 2013. As of May 7, 2014, 29 states, including Texas, had at least one confirmed case of PEDv. NVSL confirmed the first PDCoV diagnosis in the United States in March 2014. As of May 7, 2014, 14 states, including Texas, had at least one confirmed case of PDCoV.

SECD is not a zoonotic disease, does not affect people, and is not a food safety concern. The main, and perhaps only, mode of SECD transmission is fecal-oral; however, contaminated personnel, equipment or other fomites may introduce SECD into a susceptible herd. No vector or reservoir has been implicated in its spread. Economic loss occurs directly in the form of death and production loss in swine. Further monetary loss occurs because of the cost of biosecurity.

On April 18, 2014, USDA announced that in an effort to further enhance the biosecurity and health of the US swine herd while maintaining movement of pigs in the US, the USDA will require reporting of PEDv and PDCoV in order to slow the spread of this disease across the United States. USDA is taking this latest action due to the devastating effect on swine health since it was first confirmed even though PEDv and PDCoV are not reportable diseases under international standards established by the World Organization for Animal Health (OIE).

#### FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

#### PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to protect the swine industry from exposure to Novel Swine Enteric Coronavirus Diseases (SECD) and to conform commission cattle entry requirements to the standards accepted and utilized by other states and USDA.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

#### TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

#### REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719, or by email at "comments@tahc.texas.gov".

#### STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The commission is vested by §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant to §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purpose of this subsection.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.061, entitled "Quarantines", if the commission determines that a disease listed in §161.041 or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may establish a quarantine to prohibit or regulate the movement of (1) any article or animal that the commission designates to be a carrier of a disease listed in §161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited; and (2) an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

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

#### §51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership). Cattle which are parturient, postparturient or 18 months of age and over (as evidenced by the loss of the first

pair of temporary incisor teeth), except steers and spayed heifers being shipped to a feedyard prior to slaughter, shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

#### (b) Tuberculosis requirements.

(1) All beef cattle, bison and sexually neutered dairy cattle originating from a federally recognized accredited tuberculosis free state, or zone, as provided by Title 9 of the Code of Federal Regulations, Part 77, Section 77.8, or from a tuberculosis accredited herd are exempt from tuberculosis testing requirements.

(2) All beef cattle, bison and sexually neutered dairy cattle originating from a state or zone with anything less than a tuberculosis free state status and having an identified wildlife reservoir for tuberculosis or that have never been declared free from tuberculosis shall be tested negative for tuberculosis in accordance with the appropriate status requirements as contained in Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, prior to entry with results of this test recorded on the certificate of veterinary inspection. All beef cattle, bison and sexually neutered dairy cattle originating from any other states or zones with anything less than free from tuberculosis shall be accompanied by a certificate of veterinary inspection.

(3) All dairy breed animals, including steers and spayed heifers, shall be officially identified prior to entry into the state. All sexually intact dairy cattle, that are two months of age or older may enter provided that they are officially identified, and are accompanied by a certificate of [by a] veterinary inspection stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than two months of age must obtain an entry permit from the Commission, as provided in §51.2(a) of this chapter (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of two months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. Dairy cattle delivered to an approved feedlot for feeding for slaughter by the owner or consigned there and accompanied by certificate of veterinary inspection with an entry permit issued by the commission are exempt from testing unless from a restricted herd. In addition, all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or zones with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) All "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall obtain a permit, prior to entry into the state, in accordance with §51.2(a) of this chapter and be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within 12 months prior to entry into the state.

(5) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status, would enter by meeting the requirements for a state with similar status as stated in paragraphs (1), (2) and (3) of this subsection.

(6) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status.

(A) To be held for purposes other than for immediate slaughter or feeding for slaughter in an approved feedyard or approved

pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed by a veterinarian employed by the commission or APHIS/VS.

(B) When destined for feeding for slaughter in an approved feedyard, cattle must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the approved feedyard only in sealed trucks; accompanied with a VS 1-27 permit issued by the commission or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(7) Cattle originating from Mexico.

(A) All sexually intact cattle shall meet the requirements provided for in paragraph (6) of this subsection.

(B) Steers and spayed heifers from Mexico shall meet the federal importation requirements as provided in Title 9 of the Code of Federal Regulations, Part 93, Section 93.427, regarding importation of cattle from Mexico. In addition to the federal requirements, steers and spayed heifers must be moved under permit to an approved pasture, approved feedlot, or approved pens.

(C) Cattle utilized as rodeo and/or roping stock shall meet the requirements set out in paragraph (6)(A) of this subsection and the applicable requirement listed in clauses (i) and (ii) of this subparagraph:

(i) All sexually intact cattle shall be retested annually for tuberculosis at the owner's expense and the test records shall be maintained with the animal and available for review.

(ii) All sexually neutered horned cattle imported from Mexico are recognized as potential rodeo and/or roping stock and must:

(I) be tested for tuberculosis at the port of entry under the supervision of the USDA port veterinarian;

(II) be moved by permit to a premise of destination and remain under Hold Order, which restricts movement, until permanently identified by methods approved by the commission, and retested for tuberculosis between 60 and 120 days after entry at the owner's expense. The cattle may be allowed movement to and from events/activities in which commingling with other cattle will not occur and with specific permission by the TAHC until confirmation of the negative post entry retest for tuberculosis can be conducted; and

(III) be retested for tuberculosis annually at the owner's expense and the test records shall be maintained with the animal and available for review.

(D) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(E) All cattle moved into Texas from Mexico shall be identified with an "M" brand prior to moving to a destination in Texas.

(F) A copy of the certificate issued by an authorized inspector of the United States Department of Agriculture, Animal and Plant Health Inspection Service, for the movement of Mexico cattle into Texas must accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(G) Any certificate, form, record, report, or chart issued by an accredited veterinarian for cattle that originate from Mexico, have

resided in Mexico or are "M" branded shall include the statement, "the cattle represented on this document are of Mexican origin."

(c) Trichomoniasis Requirements:

(1) A breeding bull that is 12 months of age or older may enter the state provided the bull is officially identified as provided by §38.1 of this title (relating to Definitions) and accompanied by a certificate of veterinary inspection stating the bull tested negative for Trichomoniasis with an official Real Time Polymerase Chain Reaction (RT-PCR) test as provided by §38.6 of this title (relating to Official Trichomoniasis Tests) within 60 days prior to the date of entry.

(2) A breeding bull that is 12 months of age or older is exempt from the testing requirement of paragraph (1) of this subsection if the bull meets one of the following requirements:

(A) The bull enters on and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this chapter, for the purpose of participating at a fair, show, exhibition or rodeo, remains in the state for less than 60 days from the date of entry, and is isolated from female cattle at all times. The certificate of veterinary inspection shall include the entry permit number. A bull that is in this state on or after the 60th day from the date of entry shall test negative for Trichomoniasis with an official RT-PCR test.

(B) The bull enters on and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this chapter, directly to a feedyard that has executed a Trichomoniasis Certified Facility Agreement. The certificate of veterinary inspection shall include the entry permit number.

(C) The bull enters on and is moved by a permit, issued prior to entry from the commission, in accordance with §51.2(a) of this chapter, directly to a facility that tests the gain and feed conversion of cattle (bull test station) that isolates the bull from female cattle at all times. The certificate of veterinary inspection shall include the entry permit number. The bull shall return to the out-of-state premises destination directly from the bull test station or test negative for Trichomoniasis with an official RT-PCR test.

(D) A Texas bull that is enrolled in an out-of-state facility that tests the gain and feed conversion of cattle (bull test station) and isolates the bull from female cattle at all times may move directly to the Texas premises of origin. The certificate of veterinary inspection shall state the bull was enrolled in a bull test station and was isolated from female cattle.

(E) The bull is enrolled in an out-of-state semen collection facility, which complies with Certified Semen Services Minimum Requirements for Disease Control of Semen Produced for Artificial Insemination, that isolates the bull from female cattle at all times and the bull is moved directly from a semen collection facility into the state. The certificate of veterinary inspection shall state the bull was enrolled in a semen collection facility and was isolated from female cattle.

(F) The bull originates from a herd that is enrolled in a Certified Trichomoniasis Free Herd Program or other certification program that is substantially similar, as determined by the Executive Director, to the program requirements provided by §38.8 of this title (relating to Herd Certification Program--Breeding Bulls).

{(1) All breeding bulls entering the state more than 12 months of age shall be tested negative for Trichomoniasis with an official Polymerase Chain Reaction (PCR) test within 60 days prior to entry. Trichomoniasis samples pooled at the laboratory may qualify as the official test if no more than five total samples are pooled. Breeding bulls shall be individually identified by an official identification device and be accompanied with a certificate of veterinary inspection;

indicating the age. The official identification number shall be written on the certificate of veterinary inspection. Official identification includes: Official Alpha-numeric USDA metal eartags (bangs tags); Official 840 RFID tags; Official 840 flap or bangle tags; and Official individual animal breed registry tattoo or breed registry individual animal brands; or official state of origin Trichomoniasis tags. Bulls older than 12 months of age shall be tested one time by an official PCR test prior to entry into Texas. Breeding bulls, entering Texas as a recent resident, enrolled at a CSS certified artificial insemination facility where the bull(s) was isolated from female cattle and accompanied by documents with an original signature by the veterinarian or manager of the facility; are exempt from the test requirements. Untested bulls from out of state can enter Texas directly to a feedyard that has executed a Trichomoniasis Certified Facility Agreement, and are on a VS 1-27 permit and accompanied with an entry permit number issued by the Commission. Texas bulls participating in out of state "bull station trials" may return to their Texas farm of origin without a Trichomoniasis test if maintained in a controlled environment out of state without any contact with female cattle, which needs to be indicated on the health certificate issued for the bull(s).]

{(2) All bulls entering Texas for the purpose of participating at fairs, shows, exhibitions and/or rodeos, which are 12 months of age or older and capable of breeding may enter the state without testing for Trichomoniasis, but shall obtain a permit, in accordance with §51.2(a) of this chapter, prior to entry. Bulls permitted for entry into the State of Texas under the provisions of this subsection shall not be commingled with female cattle or used for breeding. Bulls that stay in the state more than 60 days must be tested negative for Trichomoniasis with an official PCR test.]

(3) All breeding bulls entering from a foreign country [Mexico or from any country that does not have an established Trichomoniasis testing program,] shall enter on and be moved by a permit, issued prior to entry[;] from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and shall be placed [remain] under Hold Order and officially [until] tested [negative] for Trichomoniasis with not less than three official culture tests conducted not less than seven days apart, or an official RT-PCR [PCR] test, within 30 days after entry into the state. All bulls shall be isolated [maintained separate] from female cattle at all times until tested negative for Trichomoniasis. The Hold Order shall not be released until all other post entry disease testing requirements have been completed. All bulls tested for Trichomoniasis shall be officially identified [by an official identification device or method] at the time the initial test sample is collected. The identification shall be recorded on the test documents.

{(4) All breeding bulls entering from Canada or from any country that has an established Trichomoniasis testing program but for which the animals are not tested to meet the certification and testing requirements of paragraph (1) of this subsection, shall enter on and be moved by a permit, issued prior to entry, from the commission, in accordance with §51.2(a) of this chapter, to a premises of destination in Texas and remain under Hold Order until tested negative for Trichomoniasis with not less than three official culture tests conducted not less than seven days apart, or an official PCR test within 30 days of entry into the state. All bulls shall be maintained separate from female cattle until tested negative for Trichomoniasis. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. The identification shall be recorded on the test documents.]

§51.14. Swine.

(a) Swine imported into Texas for feeding, breeding, or exhibition purposes shall be accompanied by a certificate of veterinary inspection certifying that:

- (1) swine have not been fed garbage, either raw or cooked;
- (2) swine have not been exposed to pseudorabies;
- (3) swine have not been vaccinated for pseudorabies; [and]

(4) for non-commercial swine entering Texas for purposes other than immediate slaughter, swine have not originated from a premises known to be affected by Novel Swine Enteric Coronavirus Disease(s) (SECD), and have not been exposed to SECD within the last 30 days; and

(5) [(4)] swine have been permanently identified (eartag, earnotched, or number tattoo).

(b) Swine not known to be infected with or exposed to pseudorabies, and originate from a state not classified as Stage IV or V, may enter provided they:

(1) are tested negative within 30 days prior to entry and then held in isolation and under quarantine on the premise where first unloaded and tested or retested for PRV in not less than 30 nor more than 60 days after arrival. Feeder swine are exempt from the retest provided that the swine enter on an entry permit from the commission and are destined directly to a designated feedlot and remain restricted to the feedlot until they are sent to slaughter; or

(2) originate from a qualified PRV-negative herd; or

(3) are shipped directly from a farm of origin in a Stage IV or free state or area as described in the National PRV Program; or

(4) originate from and are sold at an approved feeder-pig market in a Stage IV or free state or area and enter the state directly from that market.

(c) Additionally, breeding swine shall have a negative brucellosis test within the previous 30 days or originate from a validated brucellosis-free herd or state and shall be vaccinated within the previous 30 days with Leptospirosis vaccine containing the following strains: Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona.

(d) Exhibition swine originating in Texas entered in terminal shows are exempt from brucellosis and pseudorabies requirements.

(e) Swine imported into Texas for slaughter purposes shall either be consigned directly to slaughter or to a federally approved livestock market where a VS 1-27 will be issued to accompany them to slaughter following sale.

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 June 4, 2014.

TRD-201402634

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 20, 2014

For further information, please call: (512) 719-0724



## TITLE 10. COMMUNITY DEVELOPMENT

# PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

## CHAPTER 1. ADMINISTRATION

### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

#### 10 TAC §1.20

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

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC §1.20, concerning Asset Review Committee. This repeal is proposed because the duties of the Asset Review Committee may be more efficiently handled within the Asset Management Division and the Committee is no longer needed.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal of the section will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to 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 repeal will be in effect, the public benefit anticipated as a result of the repeal will be the more efficient use of Department staff. There will not be economic cost to any individuals formerly required to comply with the rule as a result of its repeal.

**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 may be submitted to the Texas Department of Housing and Community Affairs, Jeffrey T. Pender, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M., JULY 11, 2014.

**STATUTORY AUTHORITY.** The repeal is proposed pursuant to Texas Government Code Annotated, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code Annotated, §2306.141, which specifically authorizes the Department to adopt rules governing the administration of its housing programs.

The proposed repeal affects no other code, article, or statute.

§1.20. *Asset Review Committee.*

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 June 6, 2014.

TRD-201402650

Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: July 20, 2014  
For further information, please call: (512) 475-3959



### SUBCHAPTER B. SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE FAIR HOUSING ACT

#### 10 TAC §1.206

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC §1.206, concerning the Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973. The purpose of these amendments is to align the rule with federal and state requirements.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments, as the rule implements existing federal requirements.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be compliance with federal and state requirements, consistency across Department programs, and improved access for persons with disabilities. Mr. Irvine has also determined that there will be no fiscal impact on state or local government as a result of enforcing or administering the amendments. There will be no economic costs or de minimis costs to persons who are required to comply with the amendments.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will not be an economic effect on small or micro-businesses that is different from that stated above.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held June 20, 2014, through July 21, 2014, to receive input on the proposed amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3140. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JULY 21, 2014.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§1.206. *Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.*

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):



(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001 and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671* and not otherwise modified in this subchapter:

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submit a full application for funding after January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that submit a full application for funding after January 1, 2014.

(c) After March 12, 2012, Recipients of Emergency Solutions Grant and Homeless Housing and Services Program funds must comply with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671* and not otherwise modified in this subchapter.

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 June 6, 2014.

TRD-201402651

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 20, 2014

For further information, please call: (512) 475-3959



## CHAPTER 10. UNIFORM MULTIFAMILY RULES

### SUBCHAPTER H. INCOME AND RENT LIMITS

#### 10 TAC §10.1004

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §10.1004, concerning Housing Tax Credit Properties, TCAP, Exchange and HTF. The proposed new section addresses the change made by H.R. 2642 to the identification of a rural eligible place for Housing Tax Credit Properties, TCAP, Exchange and HTF Developments administered by the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section

is in effect, enforcing or administering the new section does not have any foreseeable implications related to 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 new section is in effect, the public benefit anticipated, as a result of the new section, will be improved compliance and clarity regarding requirements. There will not be any additional economic cost to any individuals required to comply with the new section because it is based on existing federal requirements.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses as the rule implements existing federal requirements.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held June 20, 2014, through July 21, 2014, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M., JULY 21, 2014.**

**STATUTORY AUTHORITY.** The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

*§10.1004. Housing Tax Credit Properties, TCAP, Exchange and HTF.*

(a) Except for certain rural properties, Housing Tax Credit, TCAP, Exchange, and HTF Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50 percent and 60 percent Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50 percent and HERA Special 60 percent income limit by household size. These higher limits can only be used if at least one building in the Project (as defined on line 8b on Form 8609) was placed in service on or before December 31, 2008.

(b) If HUD releases a 30 percent, 40 percent, 60 percent or 80 percent income limit in the MTSP charts, the Department will use that data. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

(1) To calculate the 30 percent AMGI, the 50 percent AMGI limit will be multiplied by .60 or 60 percent.

(2) To calculate the 40 percent AMGI, the 50 percent AMGI limit will be multiplied by .80 or 80 percent.

(3) To calculate the 60 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.2 or 120 percent.

(4) To calculate the 80 percent AMGI, the 50 percent AMGI limit will be multiplied by 1.6 or 160 percent.

(c) **Treatment of Rural Properties.** Section 42(i)(8) of the Code permits certain Housing Tax Credit, Exchange, and Tax Credit Assistance properties to use the national non-metropolitan median income limit when the area median gross income limit for a place is less than

the national non-metropolitan median income. The Department will identify rural eligible places in accordance with:

(1) Section 520 of the Housing Act of 1949 as amended from time to time; and

(2) Chapter 2306 of the Texas Government Code, as amended from time to time.

(3) The Department allows the use of rural income limits for HTF multifamily rental Developments that are considered rural using the process described in this subsection.

(d) Rent limits are a calculation of income limits and cannot exceed 30 percent of the applicable Imputed Income Limit. Rent limits are published by bedroom size and will be rounded down to the nearest dollar. Example 1004(1): To calculate the 30 percent 1 bedroom rent limit:

(1) Determine the imputed income limited by multiplying the bedroom size by 1.5: 1 bedroom x 1.5 persons = 1.5.

(2) To calculate the 1.5 person income limit, average the 1 person and 2 person income limits: If the 1 person 30 percent income limit is \$12,000 and the 2 person 30 percent income limit is \$19,000, the imputed income limit would be \$15,500 ( $\$12,000 + \$19,000 = \$31,000/2 = \$15,500$ ).

(3) To calculate the 30 percent 1 bedroom rent limit, multiply the imputed income limit of \$15,500 by 30 percent, then divide by 12 months and round down. In this example, the 30 percent 1 bedroom limit is \$387 ( $\$15,500 \text{ times } 30 \text{ percent divided by } 12 = \$387.50 \text{ per month. Rounded down the limit is } \$387$ ). Example 1004(2): to calculate the 50 percent 2 bedroom rent limit:

(A) Determine the imputed income limited to be calculated by multiplying the bedroom size by 1.5: 2 bedrooms x 1.5 persons = 3.

(B) The 3 person income limit is already published; for this example the applicable 3 person 50 percent income limit is \$27,000.

(C) To calculate the 50 percent 2 bedroom rent limit, multiply the \$27,000 by 30 percent, then divide by 12. In this example, the 50 percent 2 bedroom limit is \$675 ( $\$27,000 \text{ times } 30 \text{ percent divided by } 12 = \$675$ ). No rounding is needed since the calculation yields a whole number).

(e) The Department releases rent limits assuming that the gross rent floor is set by the date the Housing Tax Credits were allocated.

(1) For a 9 percent Housing Tax Credit, the allocation date is the date the Carryover Agreement is signed by the Department.

(2) For a 4 percent Housing Tax Credit, the allocation date is the date of the Determination Notice.

(3) For TCAP, the allocation date is the date the accompanied credit was allocated.

(4) For Exchange, the allocation date is the effective date of the Subaward agreement.

(f) Revenue Procedure 94-57 permits, but does not require, owners to set the gross rent floor to the limits that are in effect at the time the Project (as defined on line 8b on Form 8609) places in service. However, this election must be made prior to the Placed in Service Date. A Gross Rent Floor Election form is available on the Department's website. Unless otherwise elected, the initial date of allocation described in subsection (e) of this section will be used.

(1) In the event an owner elects to set the gross rent floor based on the income limits that are in effect at the time the Project places in service and wishes to revoke such election, prior approval from the Department is required. The request will be treated as non-material amendment, subject to the fee described in §10.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

(2) An owner may request to change the election only once during the Compliance Period.

(g) For the HTF program, the date the LURA is executed is the date that sets the gross rent floor.

(h) Held Harmless Policy.

(1) In accordance with Section 3009 of the Housing and Economic Recovery Act of 2008, once a Project (as defined on line 8b on Form 8609) places in service, the income limits shall not be less than those in effect in the preceding year.

(2) Unless other guidance is received from the U.S. Treasury Department, in the event that a place no longer qualifies as rural, a Project that was placed in service prior to loss of rural designation can continue to use the rural income limits that were in effect before the place lost such designation for the purposes of determining the applicable income and rent limit. However, if in any subsequent year the rural income limits increase, the existing project cannot use the increased rural limits. Example 1004(3): Project A was placed in service in 2010. At that time, the place was classified as Rural. In 2012 that place lost its rural designation. The rural income limits increased in 2013. Project A can continue to use the rural income limits in effect in 2012 but cannot use the higher 2013 rural income limits. For owners that execute a carryover for a Project located in a rural place that loses such designation prior to the placed in service date, unless other guidance is received from the U.S. Treasury Department, the Department will monitor using the rent limits calculated from the rural limits that were in effect at the time of the carryover. However, for the purposes of determining household eligibility, such Project must use the applicable MTSP income limits published by HUD.

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 June 6, 2014.

TRD-201402652

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 20, 2014

For further information, please call: (512) 475-3959



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 6. STATE RECORDS

##### SUBCHAPTER A. RECORDS RETENTION SCHEDULING

###### 13 TAC §§6.3, 6.4, 6.6

The Texas State Library and Archives Commission proposes amendments to 13 TAC §§6.3, 6.4, and 6.6, regarding records retention scheduling. The amendments propose to increase the recertification cycle for submitting state agency records retention schedules from 3 to 5 years. Additionally, §6.4(1) regarding submission of amendments and §6.4(3) regarding decertification are being amended to reflect current procedures and practices.

Craig Kelso, Director, State and Local Records Management Division, has determined that for each year of the first five years the rules are in effect, there will be no fiscal implications for state or local governments as a result of administering or enforcing the rules. Mr. Kelso does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of the proposed rules.

Mr. Kelso has also determined that for each year of the first five years the amendments are in effect the public benefit will be that the Texas State Library and Archives Commission will be able to dedicate more staff time to training and consulting for state agency and local government officials. State agencies will be able to use the additional time to improve their records management practices. This will increase protection and access to public records.

There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the rules as proposed.

Written comments on the proposed rules may be submitted to Sarah Jacobson, Manager, Records Management Assistance, Box 12927, Austin, Texas 78711; by fax to (512) 936-2306; or by email to [sjacobson@tsl.texas.gov](mailto:sjacobson@tsl.texas.gov).

The amendments are proposed under Government Code §441.185(e), which grants authority to the Texas State Library and Archives Commission to adopt rules concerning the submission of records retention schedules.

The proposal affects Government Code §441.185(e).

#### §6.3. *Submission of Records Retention Schedules for Recertification.*

(a) After initial certification, a records retention schedule must be submitted to the state records administrator for recertification one year from the date of certification or recertification for the first two recertification periods.

(b) After the second recertification, a records retention schedule must be submitted for recertification every five [~~three~~] years from the date of the last recertification, except for the following situations.

(1) If a state agency with a certified schedule absorbs another state agency, the records retention schedule must be submitted for recertification within one year of the effective date of the reorganization, and then will revert, when the schedule is recertified, to annual or quinquennial [~~triennial~~] certification depending on the certification status of the absorbing agency under this section at the time of absorption.

(2) A state agency may choose to submit a complete retention schedule for recertification at any time during a certification period.

(c) If a state agency with a certified schedule absorbs another state agency with a certified schedule, the records management officer of the absorbing agency may use the certified schedule of the absorbed agency as the basis for disposition of the records of the absorbed agency until the records retention schedule of the absorbing agency is recertified in accordance with this section.

(d) If a state agency with a certified schedule administers another state agency with a certified schedule, the records management

officer of the administering agency may use the certified schedule of the administratively attached agency as the basis for lawful disposition of the records of the administratively attached agency until the records retention schedule of the administering agency is recertified in accordance with this section.

(e) A records retention schedule due for recertification under this section must be submitted to the state records administrator no later than one year from the end of the month in which the schedule was certified or last recertified (or five [~~three~~] years if the state agency is due for quinquennial [~~triennial~~] recertification).

(f) At the discretion of the state records administrator and on petition from the records management officer of a state agency that it will be impossible to comply fully with the requirements of subsection (e) of this section, the state records administrator may extend the deadline for submission of the records retention schedule for up to 3 months from the end of the month the recertification of the schedule was due. One or more additional extensions may be granted, but in no case may the first extension and any additional extensions be for a combined period of more than one year from the end of the month the recertification was due.

#### §6.4. *Submission of Amendments to Records Retention Schedule.*

During a certification period the records management officer must keep the agency's retention schedule current by submitting amendments to the schedule to:

(1) add [~~or drop~~] a records series;

(2) propose an amended period of time a records series will be retained; and

~~{(3) propose an amended period of time a records series will be retained in storage by the commission; and}~~

(3) [(4)] indicate changes to information concerning a records series required under [~~subsection (a) of~~] §6.5(a) of this title (relating to Certification of Records Retention Schedules and Amendments).

#### §6.6. *Decertification.*

(a) If a state agency fails to submit a records retention schedule to the state records administrator for recertification by a required deadline or fails to request an extension, the certification of the currently approved schedule and any approved amendments to the schedule expires one year from the end of the month in which the schedule was initially certified or last recertified (or five [~~three~~] years if the state agency is due for quinquennial [~~triennial~~] recertification).

(b) If a state agency refuses to permit the inspection of a state records series by the state archivist or fails to respond to questions from the state archivist concerning the content, use, or other aspects of a state records series in order for the state archivist to determine if the series contains archival state records in accordance with Government Code, §441.186, the director and librarian may order the decertification of its approved records retention schedule, with decertification effective 30 days from the date of the order.

(c) If a state agency fails to cooperate fully and in a timely manner with the commission, the director and librarian, or any other authorized designee of the director and librarian in fulfilling their duties in accordance with Government Code §441.183, the director and librarian may order the decertification of its approved records retention schedule, with decertification effective 30 days from the date of the order.

(d) If its records retention schedule is decertified according to this section, a state agency is no longer authorized to destroy records

based on the schedule and must submit requests for the destruction of its records in accordance with §6.7 of this title (relating to Destruction of State Records).

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 June 6, 2014.

TRD-201402656

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

Earliest possible date of adoption: July 20, 2014

For further information, please call: (512) 463-5459



## CHAPTER 7. LOCAL RECORDS

### SUBCHAPTER D. RECORDS RETENTION SCHEDULES

#### 13 TAC §7.125

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §7.125(a)(10) is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 20, 2014, issue of the Texas Register.)*

The Texas State Library and Archives Commission proposes an amendment to §7.125, concerning Records Retention Schedules. The amendment is to §7.125(a)(10), regarding local government retention schedule for Records of Elections and Voter Registration (Schedule EL) pursuant to the Government Code §441.158(a). The amendment proposes revisions necessary to update the retention schedule due to changes in the Election Code that affected the retention of several records series. House Bill 2817 (82nd Legislature) separated the retention periods for election records not involving a federal office from those involving a federal office.

Craig Kelso, Director, State and Local Records Management Division, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications for state or local governments as a result of administering or enforcing the amendment. Mr. Kelso does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of the proposed amendment.

Mr. Kelso has also determined that for each year of the first five years the amendment is in effect the public benefit will be that the amended schedule will help to provide better management of records by improving retention of public records and will increase access to those records by the public.

There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendment as proposed.

Written comments on the proposed amendment may be submitted to Sarah Jacobson, Manager, Records Management Assistance, Box 12927, Austin, Texas 78711; by fax to (512) 936-2306; or by email to [sjacobson@tsl.texas.gov](mailto:sjacobson@tsl.texas.gov).

The amendment is proposed under Government Code §441.158, which grants authority to the Texas State Library and Archives Commission to provide records retention schedules to local governments; and §441.160, which allows the commission to revise the schedules.

The proposed amendment affects Government Code §441.158 and §441.160.

§7.125. *Records Retention Schedules.*

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) - (9) (No change.)

(10) Local Schedule EL: Records of Elections and Voter Registration, 3rd [2nd] Edition.  
Figure: 13 TAC §7.125(a)(10)

(11) - (12) (No change.)

(b) (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 June 6, 2014.

TRD-201402659

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

Earliest possible date of adoption: July 20, 2014

For further information, please call: (512) 463-5459



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

##### SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

#### 16 TAC §§26.403 - 26.405

The Public Utility Commission of Texas (commission) proposes amendments to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP), and to §26.404, relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan, and new §26.405, relating to Financial Need for Continued Support. The amendments and new rule will conform the commission's Substantive Rules to Senate Bill 583 of the 83rd Legislature, Regular Session, enacted in 2013, which requires the commission to reduce the support from the Texas Universal Service Fund (TUSF) available to certain incumbent local exchange companies (ILECs) over a three-year period and establish a procedure for affected ILECs to petition the commission in order to show financial need for continued support from the TUSF. Project Number 41608 is assigned to this proceeding.

Liz Kayser, Section Director in the Competitive Markets Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Ms. Kayser has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with Senate Bill 583. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Kayser has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

The commission solicits specific comments regarding the following questions:

(1) In determining the ILEC's financial need for continued support from the TUSF, to what extent should the Commission consider both the expenses incurred by the ILEC, as well as the revenues received by the ILEC?

(2) To what extent does PURA allow the Commission to consider the revenue received by the ILEC in a contested case to determine the ILEC's financial need for continued support from the high cost programs of the TUSF?

Comments on the questions and proposed sections may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed sections are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the questions and the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 41608.

The amendments and new section are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, Senate Bill 583 which amended PURA §§56.023, 56.024, 56.026, 56.031, and 56.032.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 583 which amended PURA §§56.023, 56.024, 56.026, 56.031, and 56.032.

§26.403. *Texas High Cost Universal Service Plan (THCUSP).*

(a) - (e) (No change.)

(f) Support Reduction. The commission shall adjust the support to be made available from the THCUSP according to the following criteria.

(1) For each ILEC that is not electing under subsection (e)(6) of this section and that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC is eligible to receive for each exchange on December 31, 2016 from the THCUSP is reduced:

(A) on January 1, 2017, to 75 percent of the level of support the ILEC is eligible to receive on December 31, 2016;

(B) on January 1, 2018, to 50 percent of the level of support the ILEC is eligible to receive on December 31, 2016; and

(C) on January 1, 2019, to 25 percent of the level of support the ILEC is eligible to receive on December 31, 2016.

(2) An ILEC subject to this subsection may file a petition to show financial need for continued support pursuant to §26.405(f)(1) of this title (relating to Financial Need for Continued Support) on or before January 1, 2019.

(g) [(#)] Reporting requirements. An ETP that receives support pursuant to this section shall report the following information:

(1) Monthly reporting requirement. An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks TUSF support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (d) of this section.

(2) Quarterly filing requirements. An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.

(A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.

(3) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission of the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

§26.404. *Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.*

(a) - (f) (No change.)

(g) Support Reduction. The commission shall adjust the support to be made available from the SRILEC USP according to the following criteria.

(1) For each ILEC ETP that is electing under PURA, Chapter 58 or 59 or a cooperative that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC ETP is eligible to receive for each exchange on December 31, 2017 from the SRILEC USP is reduced:

(A) on January 1, 2018, to 75 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017;

(B) on January 1, 2019, to 50 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017; and

(C) on January 1, 2020, to 25 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017.

(2) An ILEC ETP subject to this subsection may file a petition to show financial need for continued support pursuant to §26.405(f)(1) of this title (relating to Financial Need for Continued Support) on or before January 1, 2020.

(h) [(g)] Reporting requirements. An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

(1) Monthly reporting requirements. An ETP shall report on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks SRILEC USP support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (e) of this section.

(2) Quarterly reporting requirement. An ETP shall file quarterly reports with the commission showing actual SRILEC USP receipts by study area.

(A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.

(3) Annual reporting requirements. An ETP shall confirm annually to the TUSF administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan.

(4) Other reporting requirements. An ETP shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements to the TUSF.

§26.405. Financial Need for Continued Support.

(a) Purpose. This section establishes criteria to demonstrate financial need for continued support for the provision of basic local telecommunications service under the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP). This section also establishes the process by which the commission will evaluate petitions to show financial need and will set new monthly per-line support amounts.

(b) Application. This section applies to an incumbent local exchange company (ILEC) that is subject to §26.403(f) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) or §26.404(g) of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(c) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(d) Determination of financial need.

(1) Criteria to determine financial need. For each exchange that is served by an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section, the commission shall determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if and only if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.

(2) Establishing the existence of an unsubsidized wireline voice provider competitor. For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission shall determine whether an exchange contains an unsubsidized wireline voice provider competitor using the following criteria.

(A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it

(i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support, or FCC Legacy High Cost support for service provided within that exchange; and

(ii) provides basic local service using wireline-based technology.

(B) Utilizing Version 7 of the National Broadband Map, the commission shall determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.

(i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange shall be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.

(ii) The commission shall determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.

(C) The data provided by the National Broadband Map creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the National Broadband Map with regard to the presence of an unsubsidized wireline voice provider competitor within a particular census block.

(e) Criteria for determining amount of continued support. In a proceeding conducted pursuant to subsection (f) of this section, the commission shall set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts shall be effective beginning with the first disbursement following a commission order entered pursuant to subsection (f)(2) of this section, except that they shall not be effective earlier than January 1, 2017 for an exchange with service supported by the THCUSP or earlier than January 1, 2018 for an exchange with service supported by the SRILEC USP.

(1) Exchanges in which the ILEC ETP does not have a financial need for continued support. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission shall reduce the monthly per-line support amount to zero. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and which is not included in the petition, the commission shall reduce the monthly per-line support amount to zero.

(2) Exchanges in which the ILEC ETP has a financial need for continued support. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission shall set a monthly per-line support amount according to the following criteria.

(A) The initial monthly per-line support amounts for each exchange shall be equal to:

(i) the amount that the ILEC ETP was eligible to receive on December 31, 2016 for an ILEC ETP that receives support from the THCUSP;

(ii) the amount that the ILEC ETP was eligible to receive on December 31, 2017 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request pursuant to subsection (g) of this section; or

(iii) the new monthly per-line support amounts calculated pursuant to subsection (g) of this section for an ILEC ETP that has filed a request pursuant to subsection (g) of this section.

(B) Initial monthly per-line support amounts for each exchange shall be reduced by the same proportion as the extent to which the disbursements received by an ILEC ETP from the THCUSP

or SRILEC ETP in the twelve months prior to the filing of a petition pursuant to subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed pursuant to subsection (f)(1)(C) of this section.

(C) For each exchange with service supported by the THCUSP, monthly per-line support shall not exceed:

(i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed before January 1, 2016;

(ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2016, and before January 1, 2017;

(iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2017, and before January 1, 2018; or

(iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2018, and before January 1, 2019.

(D) For each exchange with service supported by the SRILEC USP, monthly per-line support shall not exceed:

(i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed before January 1, 2017;

(ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2017, and before January 1, 2018;

(iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2018, and before January 1, 2019; or

(iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2019, and before January 1, 2020.

(E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILEC USP at the time of filing of a petition pursuant to subsection (f)(1) of this section.

(F) Portability of support. The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.

(f) Proceeding to Determine Financial Need and Amount of Support.

(1) Petition to determine financial need. An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.

(A) An ILEC ETP may only file one petition pursuant to this subsection. A petition filed pursuant to this subsection shall include the information necessary to reach the determinations specified in this subsection.

(B) An ILEC ETP filing a petition pursuant to this subsection shall provide notice as required by the presiding officer pur-

suant to §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice shall be published in the *Texas Register*.

(C) A petition filed pursuant to this subsection shall include a summary of the following expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve months prior to the filing of the petition:

- (i) Plant-specific operations expense;
- (ii) Plant non-specific operations expense;
- (iii) Customer operations expense;
- (iv) Corporate operations expense;
- (v) Depreciation and amortization expenses;
- (vi) Other operating expenses;
- (vii) Total telecom plant in service;
- (viii) Total property held for future use; and
- (ix) Total telecom plant under construction.

(D) A summary filed pursuant to this subsection shall be filed publicly. Workpapers filed pursuant to this subsection may be filed publicly or under seal. Upon receipt of a petition pursuant to this section, the commission shall initiate a contested case proceeding to determine the eligibility of the ILEC ETP to receive continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission shall set a new monthly per-line support amount for all exchanges served by the ILEC ETP.

(2) The commission shall issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP shall continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.

(3) An ILEC ETP shall not be subject to §26.403(f) or §26.404(g) of this title after the commission issues a final order on the petition.

(4) The ILEC ETP filing a petition pursuant to this subsection shall bear the burden of proof with respect to all issues that are in the scope of the proceeding.

(g) De-averaging of the support received by ILEC ETPs from the SRILEC USP. On or before January 1, 2017, an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.

(1) The commission shall utilize per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP.

Figure: 16 TAC §26.405(g)(1)

(2) Utilizing the per-line proxy support amount levels set forth in this subsection, the commission shall create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual supported exchange of a company or cooperative is calculated by multiplying the number of total

eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.

(3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange shall be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.

(4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed pursuant to subsection (f)(1) of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection.

(h) Reporting requirements. An ILEC ETP that receives support pursuant to this section shall remain subject to the reporting requirements of §26.403(g) or §26.404(h) of this title.

(i) Additional Financial Assistance. Nothing in this section shall be interpreted to prohibit an ILEC or cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance pursuant to §26.408 of this title (relating to Additional Financial Assistance (AFA)).

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 June 4, 2014.

TRD-201402635

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: July 20, 2014

For further information, please call: (512) 936-7293



## TITLE 34. PUBLIC FINANCE

### PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

#### CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

##### 34 TAC §306.2

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes an amendment to §306.2, concerning Merger of Existing Pension Plan into Pension System. The amendment addresses the prior service costs of an existing pension plan being merged into the pension system. The purpose of the amendment would be to base the prior service costs, in part, on an investment return assumption applicable to the merger. Existing §862.004, Government Code,



specifically authorizes the board to adopt rules for the merger of existing pension plans into the System.

The board proposes amendments to §306.2 on the ground that mergers of preexisting plans need to reflect the costs to the System of the mergers.

Michelle Jordan, Executive Director, has determined that the public benefit for the first five years that the amended rule is in effect will be to ensure that the System is not negatively affected actuarially as a result of the merger of an existing plan into the System.

There would be no cost, as a result of adoption of the amended rule, to local governments that do not choose to merge an existing plan into the System. The System would gain added actuarial soundness as a result of adoption of the amended rule.

Small businesses or individuals would not be affected by the adoption of the amended rule.

Comments on the proposal may be submitted in writing to Michelle Jordan, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577, not later than July 20, 2014. Comments may also be submitted electronically to michelle.jordan@tesrs.texas.gov or faxed to (512) 936-3480.

The amendment is proposed under the statutory authority of Government Code, Title 8, Subtitle H, Texas Emergency Services Retirement System, §862.004.

The proposed amendment affects no other statutes, articles, or codes.

*§306.2. Merger of Existing Pension Plan into Pension System.*

(a) Subject to approval by the state board, the governing body of a department that elects to participate in the pension system shall merge into the pension system any existing defined-benefit pension plan it operates for emergency services personnel.

(b) The pension system actuary shall determine the prior service costs for active members as of the merger date [of the merging plan] according to generally accepted actuarial standards. The participating department shall pay the determined prior service costs not later than the 10th anniversary of the effective date of merger. Interest on the prior service costs accrues at the assumed rate of investment return at the time determination of the prior service costs is made, except that interest is waived if the department completes payment not later than the first anniversary of the effective date of merger.

(c) The board shall determine the discount rate for determining the liability for the monthly benefits which annuitants are being paid on the effective date of the merger and for deferred monthly benefits for inactive members who, on that date, have a vested right to a future monthly benefit upon attaining the required age. The pension system actuary shall determine the liability for these inactive members according to generally accepted actuarial standards.

(d) [(e)] On the effective date of merger, the participating department shall transfer all assets and liabilities of the former pension plan to the pension system. The pension system shall commingle the transferred assets with other assets of the system for investment purposes, but the costs of granting prior service credit and the liability for the inactive members according to subsection (c) of this section must be determined on an actuarially sound basis for the cost-sharing pension system.

(e) [(d)] The pension system shall begin paying benefits being paid to annuitants by the merging plan on the effective date of merger.

Prior service credit and monthly benefits described in subsection (c) of this section granted as a result of a merger are based on service before the effective date of merger [is creditable] as if it were performed as a member of the pension system, subject to the requirements of Section 66, Article XVI, Texas Constitution.

(f) [(e)] A department may not purchase prior service credit under §306.1 of this title (relating to Prior Service Credit for Members of Participating Departments) for any service that is credited under the terms of a merger agreement.

(g) [(f)] The details of how the assets of the merging plan will be divided among the liability for the inactive members according to subsection (c) of this section [benefits being paid to annuitants] on the effective date of the merger, the prior service costs, and future monthly contributions must be described in the merger agreement between the participating department and the pension system.

[(g) This section applies only to a merger that takes effect on or after the effective date of 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 June 9, 2014.

TRD-201402679

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

Earliest possible date of adoption: July 20, 2014

For further information, please call: (512) 936-3474

◆ ◆ ◆  
**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

**CHAPTER 151. GENERAL PROVISIONS**

**37 TAC §151.21**

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

The Texas Board of Criminal Justice proposes the repeal of §151.21, concerning the Weapons Policy.

The repeal is necessary to eliminate a rule that is duplicative of, but not required by, state law.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five-year period the repeal will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for the first five-year period there will not be an economic impact on persons as a result of the repeal. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of the repeal, will be to eliminate any confusion that could be caused by specific differences in language of the law and this rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The repeal is proposed under Texas Penal Code, §§38.11, 46.03 and 46.035.

Cross Reference to Statutes: Texas Government Code, §492.013.

§151.21. *Weapons Policy.*

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 June 6, 2014.

TRD-201402654

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: July 20, 2014

For further information, please call: (936) 437-6701



CHAPTER 152. CORRECTIONAL  
INSTITUTIONS DIVISION  
SUBCHAPTER D. OTHER RULES

37 TAC §152.71

The Texas Board of Criminal Justice proposes amendments to §152.71, concerning Acceptance of Gifts Related to Buildings for Religious and Programmatic Purposes. The proposed amendments are necessary to add the stipulation that the buildings shall be used by offenders to participate in programs with religious and other volunteers, the TDCJ chaplaincy staff, and other program personnel.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update and clarify the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code §492.013 and §501.009.

Cross Reference to Statutes: Texas Government Code §492.001.

§152.71. *Acceptance of Gifts Related to Buildings for Religious and Programmatic Purposes.*

(a) Policy. Only the Texas Board of Criminal Justice (TBCJ) is authorized to accept gifts on behalf of the Texas Department of Criminal Justice (TDCJ) from any public or private source, for use in maintaining and improving correctional programs and services. The TBCJ also specifically and earnestly encourages the involvement of volunteers and volunteer organizations for the purpose of providing reintegration of offenders through secular and spiritual programs. Correctional facilities of the TDCJ typically need additional space or amenities in existing space to provide religious services and programs. The TBCJ and the TDCJ shall actively encourage the donation of buildings and enhancements for buildings that are related to the provision of religious and secular programs.

(b) Procedures.

(1) The TDCJ shall meet with donor groups for the purpose of accepting a building or enhancement for a building related to the provision of religious and secular programs. The TBCJ respects the right of contributors to designate a specific project at a specific TDCJ unit at which the donated building or enhancement will be used.

(2) Subject to final project approval by the executive director or designee, all plans for the building or enhancement must be approved by the Facilities Division. The donor or designee will design and construct the donated buildings, at the donor's cost, after a determination that the donor or designee is qualified to design and construct the donated buildings in accordance with the TDCJ Administrative Plan for Capital Improvements by Donor Groups. All design and construction activities by the donor or designee will be coordinated through the Facilities Division. The Capital Improvement Review Committee shall review and coordinate all steps pertaining to the project, ensuring all aspects of the TDCJ Administrative Plan for Capital Improvements by Donor Groups are followed.

(3) The TDCJ shall be the owner of the donated or enhanced building and shall be responsible for the operation, control, and maintenance of the building, which shall be used for religious and other correctional programs and services. The naming of buildings obtained under this rule is subject to 37 Texas Administrative Code §155.21.

(4) Buildings that serve as chapels provided by or enhanced by donations under this rule shall provide a place for all offenders to practice their religion guaranteed by the First Amendment to the United States Constitution, in accordance with TDCJ policy and procedures for religious beliefs and practices of offenders. Furthermore, the buildings shall be used by offenders, as well as to participate in programs with religious and other volunteers, the TDCJ chaplaincy [Chaplaincy] staff, and other program [programmatic] personnel.

(5) These donations, including donations at privately-operated, state-owned facilities shall be presented at a regularly scheduled meeting of the TBCJ for discussion, consideration, and possible action.

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 June 6, 2014.

TRD-201402657

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: July 20, 2014

For further information, please call: (936) 437-6701

◆ ◆ ◆

## CHAPTER 159. SPECIAL PROGRAMS

### 37 TAC §159.9

The Texas Board of Criminal Justice proposes amendments to §159.9, Firearms Proficiency Training for Supervision Officer/Memorandum of Understanding. The proposed amendments are necessary to adopt the new memorandum of understanding with the Texas Commission on Law Enforcement and community supervision officers.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update and clarify the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Occupations Code §1701.257.

Cross Reference to Statutes: Texas Government Code §492.013.

*§159.9. Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding.*

(a) The Texas Department of Criminal Justice (TDCJ) adopts a memorandum of understanding (MOU) with the Texas Commission on Law Enforcement (TCOLE) [~~Officer Standards and Education (TCLEOSE)~~]. The MOU establishes the responsibilities between the two [(2)] agencies in developing a basic training program in the use of firearms by community supervision officers and parole officers. Section 163.34 of this title (relating to the Carrying of Weapons) governs the use of firearms for community supervision officers.

(b) The MOU is required by Texas Occupations Code[-] §1701.257.

Figure: 37 TAC §159.9(b)

(c) A copy of the MOU is filed with the TDCJ Parole Division, 8610 Shoal Creek, Austin, Texas 78758.

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 June 6, 2014.

TRD-201402660

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: July 20, 2014

For further information, please call: (936) 437-6701

◆ ◆ ◆

## CHAPTER 163. COMMUNITY JUSTICE

### ASSISTANCE DIVISION STANDARDS

#### 37 TAC §163.35

The Texas Board of Criminal Justice proposes amendments to §163.35, concerning Supervision. The proposed amendments are necessary to update language to include risk assessment concepts based on criminogenic needs.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update and clarify the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code §509.003.

Cross Reference to Statutes: Texas Government Code §492.013 and §509.003.

*§163.35. Supervision.*

(a) Definitions. The following words and terms, when used in this section, shall be defined as follows and apply to both felonies and misdemeanors, unless the context clearly indicates otherwise.

(1) Absconders refers to persons who are known to have left the jurisdiction without authorization or who have not personally contacted their community supervision officer (CSO) within three months or 90 days, and either:

(A) have an active Motion to Revoke (MTR) or Motion to Adjudicate [~~Probation~~] filed and an unserved *capias* for his or her arrest; or

(B) have been arrested on an MTR or Motion to Adjudicate [~~Probation~~], but have failed to appear for the MTR or the Motion to Adjudicate hearing and a bond forfeiture warrant has been issued by the court.

(2) Case refers to an offender assigned to a CSO for supervision.

(3) Direct Supervision refers to offenders who are legally on community supervision and who work or reside in the jurisdiction in which they are being supervised and receive a minimum of one face-to-face contact with a CSO every three months. Direct supervision begins at the time of initial face-to-face contact with an eligible CSO. Local community supervision and corrections departments (CSCDs) may maintain direct supervision of offenders living or working in adjoining jurisdictions if the CSCD has documented approval from the adjoining jurisdictions.

(4) Face-to-face Contact is when a CSO communicates in person with the offender.

(5) Field Visit is when a CSO communicates in person with the offender at the offender's place of residence or at another location outside the CSCD office.

(6) Indirect Supervision is when an offender meets one of the following criteria:

(A) an offender who neither resides nor works within the jurisdiction of the CSCD and who is supervised in another jurisdiction;

(B) an offender who neither resides nor works within the jurisdiction but continues to submit written reports on a monthly basis because the offender is ineligible or unacceptable for supervision in another jurisdiction;

(C) an offender who has absconded or who has not contacted the CSO in person within three months;

(D) an offender who resides or works in the jurisdiction, but who, while in compliance with the orders of the court, does not meet the criteria for direct supervision; or

(E) an offender who resides and works outside the jurisdiction but reports in person and who does not fall under paragraph (3) of this subsection.

(b) System of Offender Supervision. The CSCD directors shall develop a system of offender supervision that is based upon, but not limited to:

(1) the jurisdiction's profile of revoked offenders;

(2) the jurisdiction's profile of offenders under direct community supervision;

(3) the offender's identified risk and needs;

(4) availability of sanctions, programs, services, and community resources;

(5) applicable law and Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) standards and policies; and

(6) policies of the local judiciary.

(c) Supervision Process. CSOs shall provide direct supervision for cases to include, but not be limited to, the following tasks:

(1) Orientation and Intake. An orientation and intake session with the offender shall be conducted after the court has placed the offender under supervision. This session shall include a thorough discussion of the conditions of community supervision and terms of release. The CSO shall ensure [determine] that the offender has received a copy of the conditions of community supervision or terms of release ordered by the court as provided by law.

(2) Assessments. An assessment process that gathers relevant and valid information shall be completed on every offender. This process shall specifically address the offender's criminogenic needs [risk factors, need areas, obstacles to meeting those needs, offender strengths, and offender resources]. The CSO shall request specialized assessments for offenders when criminogenic needs indicate such an assessment is necessary. [it is determined that alcohol or drug abuse contributed to the offense and pursue specialized evaluations when they would significantly assist in the development of appropriate supervision plans for special needs offenders.]

[(3)] [Case Classification.] Within two months of the date of community supervision placement, acceptance of a transfer case or discharge from any residential facility, jail, or institution, the CSO or Qualified Credentialed Counselor (QCC) who has successfully completed the Texas Risk Assessment training shall determine a level of supervision for each offender based on the offender's criminogenic needs. [complete an approved TDCJ CJAD case classification instrument to assist in the evaluation of the degree of supervision needed by each individual based on the offender's risk and needs. Within 10 working days of the date of an offender's admission to a community corrections facility (CCF), the CSO assigned to supervise the offender in the facility shall complete the TDCJ CJAD case classification and assessment instrument.]

[(4) Strategies for Case Supervision (SCS) Assessments.] Within two months of the date of community supervision placement, acceptance of a transfer case or discharge from any residential facility, jail, or institution, the CSO shall conduct a SCS assessment on each felony offender classified as maximum on case classification, unless a SCS was previously completed. While the SCS assessment may be a useful case management tool, it is not required for offenders during participation in residential programs.]

(3) [(5)] Case Supervision or Treatment Plan. Within two months of the date of the most recent community supervision placement, [acceptance of a transfer case or discharge from any residential facility,] the CSO shall develop a written individualized case supervision or treatment plan based on the offender's criminogenic needs [risk and need factors] to address specific problem areas and assist the offender to achieve responsible behavior. [The supervision or treatment plan shall be completed within 10 working days from the date of an offender's admission to a CCF.]

(4) [(6)] Reassessments. CSOs or a QCC shall reevaluate criminogenic needs, [risk and need] factors, and supervision plans at least every 12 months for all direct cases. An approved TDCJ CJAD reassessment shall be completed any time a significant change occurs in the status of the offender. Any necessary modification of the supervision plan shall be indicated in writing in the case file. [Upon discharge from a residential facility, the CSO assigned to supervise the offender in the facility shall complete a discharge plan.]

(5) [(7)] Supervision Contacts. CSOs shall make face-to-face, field visit, telephone, and collateral contacts with the offender, family, community resources, or other persons pursuant to and consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at increased levels of supervision because of assessments of greater risk or special needs shall receive a higher level of contacts than offenders at lower levels of supervision. The nature and extent for supervision contacts with offenders shall be specified in the CSCD's written policies and procedures.

(6) [(8)] Documentation in Supervision Case Files. CSOs shall use a problem oriented record keeping system to document all significant actions, decisions, services rendered, and periodic evaluations in the offender's case file, including, but not limited to, the offender's status regarding the level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention.

(7) [(9)] Violations. CSCD directors shall establish written policies and procedures that require CSOs to make recommendations to the courts regarding violations of the conditions of community supervision, as well as when violations may be handled administratively. The availability of progressive interventions and sanctions as alterna-

tives to incarceration and incentives shall be considered by the CSO and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(8) [(40)] Intra-state Transfers. The standards strive to ensure public safety by recognizing the need of the sending and receiving jurisdictions to continue control and supervision over these offenders.

(A) Except in cases of non-CSCD residential facility placements, supervision shall be transferred if an offender meeting the definition of direct supervision will be in another jurisdiction for more than 30 days, except when the designated representatives of the two CSCDs agree there is good cause for the original jurisdiction to maintain supervision. Only the court retaining jurisdiction over an offender has the authority to modify or alter a condition of community supervision. The CSCD directors shall ensure that CSOs providing direct supervision to offenders transferred from other Texas jurisdictions shall fully enforce the order of the court that placed an individual on community supervision. It is the responsibility of the offender to comply with the conditions of community supervision as imposed by the court. The CSCD directors shall ensure that CSOs provide the same level of supervision to courtesy cases as they do for the offenders in their jurisdiction. The documents necessary for transfer shall include the transfer form, the court order placing the offender on community supervision citing all conditions of community supervision, the offense report, criminal history, state identification (SID) or personal identifier (PID) number within 90 days of transfer to the receiving jurisdiction, the pre and post-sentence investigation report where legally mandated and any assessments that have been completed. The CSCD directors who decline or cease to provide courtesy supervision to offenders from other

jurisdictions shall immediately notify, in writing, the original jurisdiction of the reasons for declining supervision. The CSCDs that cease to provide courtesy supervision to offenders from other jurisdictions for violations other than absconding shall consult with the original jurisdiction before closing supervision. They will then notify the original jurisdiction, in writing, of the reason for closing supervision.

(B) Dual Supervision: The court retaining jurisdiction over an offender may also order the offender to report to the original jurisdiction as well as the jurisdiction where the offender resides or works.

(9) [(44)] Transporting Offenders. CSOs shall not transport offenders held in a county jail pursuant to an arrest warrant. All other transportation of offenders shall be in accordance with the CSCD's policies or pursuant to a court order.

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 June 6, 2014.

TRD-201402662

Sharon Felfe Howell

General Counsel

Texas Department of Criminal Justice

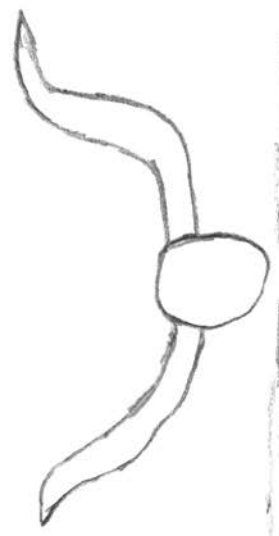
Earliest possible date of adoption: July 20, 2014

For further information, please call: (936) 437-6701

◆ ◆ ◆

*Kristen Martinez*  
*8th Grade*

TEXAS



# 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 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 45. MARKETING PRACTICES SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

##### 16 TAC §45.117

Proposed amended §45.117, published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8730), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on June 9, 2014.  
TRD-201402666



## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

##### 22 TAC §537.53

Proposed new §537.53, published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8550), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on June 5, 2014.  
TRD-201402637



*Marisa Pineda*  
*4th 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.7001, concerning Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services, and §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners; and adopts the repeal of §355.8081, concerning Reimbursement Methodology for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, Psychologists' Services, Licensed Psychological Associates' Services, Provisionally Licensed Psychologists' Services, Maternity Clinic Services, and Tuberculosis Clinic Services. The amendments and repeal are adopted without changes to the proposed text as published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2641) and will not be republished.

#### Background and Justification

The amendments and repeal will update the rules regarding Medicaid reimbursement methodology so that they more accurately reflect the reimbursement methodology for physicians and other practitioners, correct references, and delete redundant language.

The repealed language from §355.8081 is added to §355.8085. As a result, all of the rules relating to reimbursement methodology for physicians and other practitioners are located in one section of the Texas Administrative Code.

In addition to adding the providers listed in §355.8081 to the eligible providers listed in §355.8085, occupational and speech therapists are added to reflect current practice. Additionally, a reimbursement methodology for physician-administered vaccines is added to reflect current practice. Existing language is clarified to indicate that HHSC will adjust the reimbursement methodology related to temporarily enhanced reimbursement for certain providers in compliance with federal legislation enacted in the Patient Protection and Affordable Care Act, based on final direction from the Centers for Medicare and Medicaid Services.

#### Comments

The 30-day comment period ended May 11, 2014. During this period, HHSC received no comments regarding the proposal.

## SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

### 1 TAC §355.7001

#### Statutory Authority

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

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

Filed with the Office of the Secretary of State on June 9, 2014.

TRD-201402675

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 29, 2014

Proposal publication date: April 11, 2014

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



## SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 5. GENERAL ADMINISTRATION

#### 1 TAC §355.8081

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

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

Filed with the Office of the Secretary of State on June 9, 2014.

TRD-201402677

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 29, 2014

Proposal publication date: April 11, 2014

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



### **1 TAC §355.8085**

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

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

Filed with the Office of the Secretary of State on June 9, 2014.

TRD-201402678

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Effective date: June 29, 2014

Proposal publication date: April 11, 2014

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



## **TITLE 10. COMMUNITY DEVELOPMENT**

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

#### **CHAPTER 1. ADMINISTRATION**

##### **SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES**

### **10 TAC §1.5**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 1, Subchapter A, §1.5, concerning Previous Participation, without

changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3349). The text will not be republished.

**REASONED JUSTIFICATION FOR THE RULE.** The amendments to §1.5 serve to clarify the review process and ensure efficient processing of reports on asset management performance only when outstanding noncompliance is identified.

The Board approved the final order adopting the amendments on June 5, 2014.

**PUBLIC COMMENT.** Comments were accepted from April 25, 2014, through May 16, 2014. No public comments were received.

**STATUTORY AUTHORITY.** The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules. Specifically, Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs.

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 June 6, 2014.

TRD-201402653

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 26, 2014

Proposal publication date: April 25, 2014

For further information, please call: (512) 475-3959



### **10 TAC §1.24**

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Subchapter A, §1.24, concerning Protected Health Information, without changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3350). The text of the rule will not be republished.

**REASONED JUSTIFICATION.** The new section is adopted to establish one consistent rule for all Department programs concerning Protected Health Information.

The Board approved the final order adopting the new rule on June 5, 2014.

**PUBLIC COMMENT.** Comments were accepted from April 25, 2014, through May 25, 2014. No public comments were received.

**STATUTORY AUTHORITY.** The new section is adopted 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 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 June 9, 2014.

TRD-201402683

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 29, 2014

Proposal publication date: April 25, 2014

For further information, please call: (512) 475-3974



## CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 10 TAC §5.23

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 5, Subchapter A, §5.23, concerning Protected Health Information, without changes to the proposal as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3351).

**REASONED JUSTIFICATION.** The repealed section will be replaced by new §1.24, concerning Protected Health Information. The new section is adopted concurrently with the repeal in this issue of the *Texas Register*.

The Board approved the final order adopting the repeal on June 5, 2014.

**PUBLIC COMMENT.** Comments were accepted from April 25, 2014, through May 25, 2014. No comments were received.

**STATUTORY AUTHORITY.** The repeal is adopted pursuant to the authority of 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 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 June 9, 2014.

TRD-201402682

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 29, 2014

Proposal publication date: April 25, 2014

For further information, please call: (512) 475-3974



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §25.53, relating to Electric Service Emergency Operations Plans, and §25.362, relating to Electric Reliability Council of Texas (ERCOT) Governance, with changes to the proposed text as published in the February 7, 2014, issue of the *Texas Register* (39 TexReg 564). The amendments update the rules based on new studies and the experience gained from several emergency situations since §25.53 was amended in 2008. These include recent drought issues and recommendations from the Report on Extreme Weather Preparedness Best Practices prepared by Quanta Technologies, LLC for the commission pursuant to Texas Utilities Code §186.007. These amendments are adopted under Project Number 39160.

The commission received joint comments on the proposed amendments from AEP Texas Central Company (TCC) and AEP Texas North Company (TNC) (collectively, AEP Texas; AEP Southwestern Electric Power Company (SWEPCO); Electric Transmission Texas LLC (ETT); El Paso Electric Company (EPE); CenterPoint Energy Houston Electric, LLC; Lone Star Transmission, LLC; Texas-New Mexico Power Company; Entergy Texas, Inc.; and Southwestern Public Service Company (SPS) (collectively, the Companies). The commission also received comments on the proposed amendments from Brazos Electric Power Cooperative, Inc. (Brazos Electric); Lower Colorado River Authority (LCRA); Luminant Generation Company LLC (Luminant); NRG Texas LLC (NRG); Oncor Electric Delivery Company LLC (Oncor); Texas Electric Cooperatives, Inc. (TEC); and Texas Industrial Energy Consumers (TIEC).

#### *General Comments*

The Companies stated that the proposed changes to §25.53 were the result of a substantial effort by commission staff to work with interested parties to draft a proposal that gave due consideration to the parties' concerns. LCRA stated that the proposed amendments sufficiently addressed matters raised in previous comments. NRG commented that the proposal for publication strikes a fair balance between the costs of rule compliance and the public benefit of an increased level of preparedness to address issues resulting from emergency situations. Oncor continued to applaud the commission for its leadership and work on this very important topic. TIEC stated that it appreciated commission staff's efforts to draft a rule that meets the statutory emergency operations plan (EOP) requirements, while minimizing undue burden to registered power generation companies (PGCs).

#### *Commission response*

The commission appreciates the work that commenters engaged in with staff to formulate a proposed rule that sought to promote better emergency preparedness without creating undue burdens on market participants. The work of commission staff and commenters prior to publication of the proposed rule enabled the commenters to narrow their comments on the proposed rule to a few issues, which are discussed below.

#### *Section 25.53(a)*

As explained below in response to comments on subsection (c)(2)(l), the commission has added a sentence to subsection (a) to clarify that if a provision in the rule pertaining to an emergency operation plan does not apply to a market entity or electric cooperative, the market entity or electric cooperative shall include an explanation in its emergency operations plan of why the provision does not apply.

#### *Section 25.53(b)*

TIEC supported the proposed biannual deadlines for EOP updates, which align with ERCOT's weatherization declaration deadlines. The proposal would minimize administrative burdens and increase the efficiency in the overall reporting process.

*Commission response*

The commission agrees with TIEC and therefore adopts subsection (b) as proposed.

*Section 25.53(c)(1)*

The Companies recommended a clarification to subsection (c)(1) to make it clear that the provision applied only to transmission and distribution facilities.

*Commission response*

The commission agrees with the proposed clarification and has modified the provision with the language provided by the Companies.

*Section 25.53(c)(2)*

TIEC suggested clarifying in the preamble that the rule is intended to specify the required components of the overall EOP, and would not require separate plans to be drafted or submitted for the items listed in subsection (c)(2).

*Commission response*

The commission agrees that the EOP rule does not require separate plans for the items listed in subsection (c)(2). The commission has not prescribed the format for the EOP, but rather has developed requirements for certain items that must be addressed in the EOP. A market participant has discretion to determine how its EOP is structured. No changes to the rule are necessary.

Luminant commented that while it recognized that the recommendation came from the Quanta report, it disagreed with and did not support the proposed language in subsection (c)(2)(B) that would require EOPs to include a plan that addressed the effects of weather design limits. Luminant stated that both the existing and proposed rule requirements already require the EOP to address weatherization. Luminant stated that it would not be meaningful to require PGCs to identify the effects of weather design limits, as varying components may have varying weather design limits, complicating an analysis of the exact temperature that may impact a unit. Luminant commented that a precise weather design limit may or may not identify the "weak links" in protection against extreme temperatures. Luminant added that each weather event was dynamic and that any engineering analysis that attempted to identify a specific weather design limit would be rendered meaningless. Brazos Electric agreed with Luminant's request to delete proposed subsection (c)(2)(B). TIEC agreed with Luminant's comments, also commenting that there is no definition of "critical failure point," that most critical failure points are not known until there has actually been a failure, and that weather design limits are often not provided by a generation resource manufacturer. As an alternative, TIEC recommended that the provision be limited to any known critical failure points.

*Commission response*

The commission agrees with TIEC's alternative recommendation to limit the provision to any known critical failure points, including any effects of weather design limits. The provision, as adopted, requires a plan that addresses any known critical failure points, including any effects of weather design limits. The provision limits the relevance of weather design limits to those that are, or are related to, known critical failure points. The provi-

sion does not require the identification of specific weather design limits and does not delineate other contents of the plan. A plan that addresses known critical failure points is an important part of an EOP, because critical failure points are parts of the generation facility that can produce forced outages. Explicitly listing weather design limits as a type of potential critical failure point is appropriate because it ensures that a generation facility owner considers this potential source of an outage.

Luminant commented that the proposed broad language in subsection (c)(2)(I) should be limited to PGCs that have contractual obligations with ERCOT for alternative fuel capability. Luminant stated that the commission should not require PGCs to incur the significant expense of testing alternative fuels when PGCs have voluntarily made their units capable of using such fuels. Requiring generators to operate their plants with alternative fuel for testing purposes would be uneconomic and potentially very expensive for generators. Luminant went on to state that imposing such a requirement on units capable of using fuel alternatives could significantly discourage generators from enabling their units of having such capabilities. Luminant proposed that the commission narrow the proposed requirement to apply only to PGCs that have contractual obligations with ERCOT, such as black start or reliability must run (RMR) facilities, to run units using alternative fuel. Brazos Electric supported Luminant's recommendation. Brazos Electric also stated that to the extent the commission changes subsection (c)(2)(I), similar changes will need to be made to the parallel provisions in subsection (h)(4) for electric cooperatives.

*Commission response*

The purpose of the rule is to ensure market participants prepare for emergencies. The rule does so by listing various issues that a market participant must consider in preparing for emergencies. The rule does not dictate a particular result. Subsection (a) of the rule as adopted states that the commission intends that a market participant apply the requirements of the rule in a manner that is appropriate to its particular circumstances. If an entity considers whether to have alternative fuel testing and explains in its EOP that it has decided not to do so and the reasons for that decision, then the requirements of this provision have been met. The commission has added a sentence to subsection (a) to clarify that if a provision in the rule pertaining to an emergency operation plan does not apply to a market entity or electric cooperative, the market entity or electric cooperative shall include an explanation in its emergency operations plan of why the provision does not apply.

Concerning subsection (c)(2)(E) and (G), Luminant stated that there was no need to plan for the inventory of pre-arranged supplies or create checklists for generating facility personnel in the context of non-weather emergencies. Luminant stated that limiting subsection (c)(2)(E) and (G) to extreme weather emergencies would be consistent with proposed subsection (c)(2)(F), which requires the EOP to include a plan that addresses staffing during severe weather events. Brazos Electric agreed with Luminant and stated that if the commission adopted Luminant's recommendations, similar revisions would need to be made to the parallel provisions in subsection (h)(3)(H) and (4)(D).

*Commission response*

The commission disagrees with Luminant's request. Pre-arranged supplies and checklists for generating facility personnel can apply to circumstances outside of a weather event, such as a fire or explosion at a generation facility.

TIEC offered comments regarding subsection (c)(2)(M) and (3), relating to the proposed requirement to submit an affidavit from the PGC's or retail electric provider's (REP's) operating officer affirming that all personnel are familiar with and committed to carrying out the EOP. TIEC stated that this proposed language was unclear and could be read to require the affirmation from the chief operating officer (COO) or similar executive. To resolve the ambiguity, TIEC suggested adopting language similar to other commission rules that would give the PGC or REP some discretion to identify the appropriate staff who may submit the affidavit.

#### *Commission response*

The commission agrees with TIEC and adopts its proposed language in subsection (c)(2)(M) and (3) to give the market participant discretion to identify the particular official with responsibility for the market participant's operations to sign the affidavit.

#### *Section 25.53(d)*

Oncor expressed the need to clarify subsection (d) regarding which entities were envisioned in the phrase "an electric utility that directly serves retail customers." Oncor questioned whether this means electric utilities, such as Oncor, that in one sense of the phrase do not directly serve retail customers.

#### *Commission response*

For clarification, the commission has changed the phrase quoted by Oncor to "provides retail delivery service to retail electric providers or makes retail sales to end-use customers." The provision in which this phrase is contained is not intended to apply to an electric utility that provides service only at wholesale. The provision requires notice to commission staff and Texas Division of Emergency Management (TDEM) District Coordinators of the date, time, and location of at least one of an electric utility's drills each year. By referring only to an electric utility that provides retail delivery service to retail electric providers or makes retail sales to end-use customers, the commission has limited the applicability of the provision to electric utilities that may need to have extensive interaction with the public during an emergency.

Oncor sought clarification that the requirement in subsection (d) for a transmission and distribution utility (TDU) to provide notice to the appropriate TDEM District Coordinators is limited to TDEM District Coordinators in the TDU's service area.

#### *Commission response*

The commission agrees with Oncor and has added "in the electric utility's service area" for clarification.

#### *Section 25.53(h)*

TEC proposed to retain the reference to Public Utility Regulatory Act (PURA) §11.003 in the current subsection (h)(1), because the definition of electric cooperative in §25.5(35) is different from the statutory definition of electric cooperative in PURA §11.003(9) and would create confusion. TEC proposed that the statutory reference be retained in this provision because it reflects the current definition of electric cooperative.

#### *Commission response*

The commission declines to adopt TEC's proposal. The outdated definition of electric cooperative in §25.5(35) includes all entities currently defined as electric cooperatives under PURA §11.003(9). Therefore, TEC's members are not adversely affected by the definition in §25.5(35). Section 25.5(35)(A) and (B) contain the current definition of electric cooperative in PURA

§11.003(9); §25.5(35)(C) is outdated and will be deleted by the commission in a future rulemaking proceeding. In addition, the only entity implicated by §25.5(35)(C) is Sharyland Utilities, L.P. (Sharyland), and Sharyland is currently being regulated as an electric utility. Therefore, Sharyland will need to continue to meet the requirements of this rule that apply to an electric utility rather than an electric cooperative.

TEC also provided comments related to subsection (h)(2). TEC suggested using the term "major" or "substantial" instead of "material" when referring to significant changes in the plan. TEC stated that using the term "material" would cause confusion for non-legal personnel. TEC stated using one of these terms would promote compliance and reduce confusion and provided sample language to demonstrate the proposed change.

#### *Commission response*

The sentence to which TEC referred was "A significant change to a plan includes, but is not limited to, a change that has a material impact on how the electric cooperative would respond to an emergency." Under subsection (h)(2), if an electric cooperative makes a significant change to its emergency operations plan, it shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the change to the plan no later than 30 days after the change takes effect. The Merriam-Webster Online dictionary, copyright 2014 by Merriam-Webster, Incorporated, includes "having real importance" as a definition of material, whereas it includes "very important" as a definition of major and "important, essential" as a definition of substantial. Although it is difficult to precisely describe the threshold for filing a revised report or summary, inclusion of "major" or "substantial" rather than "material" would suggest a threshold that is higher than the commission intends. The commission encourages electric cooperatives to file revised plans or plan revisions if they are unclear whether the threshold has been met. The commission therefore declines to make TEC's suggested change.

TEC and Brazos Electric commented on the use of the word "public" in the communications plan in subsection (h)(3)(B). TEC stated the use of this word is unclear because cooperatives have a local base of members who would be impacted by situations involving their electric service. They stated that resources used to communicate with its members will be greatly reduced by the need to communicate an additional message to the public. TEC proposed deleting the words "the public" from the communications plan requirement and retain the original wording. Brazos supported TEC's recommendation.

#### *Commission response*

As the commission explained previously in response to Luminant's comments on subsection (c)(2)(l), the purpose of the rule is to ensure market participants prepare for emergencies. The rule does so by listing various issues that a market participant must consider in preparing for emergencies. If an electric cooperative considers whether to include in its emergency communications plan procedures for communicating with the public and explains in its EOP that it has decided not to do so and the reasons for that decision, then the requirements of subsection (h)(3)(B) have been met. However, the commission encourages cooperatives to include in their plans procedures for communicating with the public. An emergency in an electric cooperative's service area may impact many people who are not members of the public, including persons who work in the cooperative's service area and persons traveling in the area. Low-cost examples of methods to communicate to the public that cooperatives could

use include social media outreach, press releases, and website postings. Many people could benefit from such communications, including the cooperative's members. The commission therefore declines to make changes to the proposed rule in response to these comments.

Brazos Electric commented that in subsection (h)(4)(B) it was concerned about the degree of specificity for weather design limits and critical failure points the commission intended for the new EOP requirement. Brazos Electric commented that if the intent is for the EOP to contain specific pieces of equipment or discreet components, the plan would become so large it would be unworkable. Brazos Electric stated that it was also unsure of the intent of the clause "including any effects of weather design limits" and recommended this phrase be deleted entirely. Brazos Electric noted that generation units are typically designed to meet specific "performance guarantees" and are rarely required to operate in extreme ambient conditions. The design and build of a generating facility is performed on best practices for the geographic region it is to be located. There are also redundant systems that impact critical failure points or determine weather design limits. Brazos Electric stated that generation plants do not come with a complete listing of weather design limits, and that each piece of equipment may have different design limits, and when working together with other equipment or components, the limits may be different than when working separately. They proposed deleting this subsection entirely. TEC agreed with Brazos Electric that this provision should be deleted.

#### *Commission response*

The commission has modified subsection (h)(4)(B) in the same manner that it modified the comparable provision located in subsection (c)(2)(B). The commission has limited the provisions to any known critical failure points, including any effects of weather design limits. The provision, as adopted, requires a plan that addresses any known critical failure points, including any effects of weather design limits. The provision limits the relevance of weather design limits to those that are, or are related to, known critical failure points. The provision does not require the identification of specific weather design limits and does not delineate other contents of the plan. A plan that addresses known critical failure points is an important part of an EOP, because critical failure points are parts of the generation facility that can produce forced outages. Explicitly listing weather design limits as a type of potential critical failure point is appropriate because it ensures that a generation facility owner considers this potential source of an outage.

TEC recommended that the word "drill" be deleted and replaced with "review" in subsection (h)(5). Brazos Electric agreed with TEC's recommendation.

#### *Commission response*

The commission agrees with the recommendation and has changed the provision accordingly.

#### *Section 25.53(i)*

Brazos Electric requested the commission revise the effective date to June 30, 2015, because the proposed changes impact their transmission and generation divisions and functional areas. Changing the date to June 30 would allow adequate time to implement and document the changes. TEC supported this proposed revision.

#### *Commission response*

Given that the cooperatives are subject only to limited commission regulatory requirements and many cooperatives are small, some cooperatives may need more time than the March 31, 2015 deadline in the proposed rule allows. The commission has therefore amended the effective date for cooperatives to June 1, so that the deadline coincides with the beginning of the Atlantic Hurricane Season.

#### *Section 25.362(i)(2)(H)*

Brazos Electric expressed concern that the commission is proposing to unilaterally grant ERCOT the right to conduct generator site visits to review compliance with weatherization plans and allow ERCOT the right to obtain information concerning water supplies for generation purposes, including contracts, water rights, and other information, and expressed concern about granting such rights. Brazos Electric stated that there were liability issues when a third party was on site that needed to be considered as well as confidentiality obligations for contracts and related information that need be maintained. Brazos Electric recommended that specific reference be made in the proposed amendments to the ERCOT protocols because the protocols provide for some liability limitations and specifically address the provision of confidential information to ERCOT. TEC supported Brazos's recommended revisions to this subsection.

ERCOT disagreed with Brazos Electric's proposal because ERCOT is already required to follow ERCOT protocols, except when they conflict with a higher authority. ERCOT stated that the ERCOT protocols already prohibit ERCOT disclosure of any resource-specific costs, design, and engineering data; the status of resources, including outages, limitations, or scheduled or metered resource data; and generation resource emergency operations and weatherization plans. ERCOT stated that the commission's rules require ERCOT to maintain the confidentiality of competitively sensitive information and other protected information. With regard to Brazos Electric's concern about liability arising out of ERCOT site visits, ERCOT stated that ERCOT employees can and should be entitled to all common law remedies, except where specifically limited by existing law, including the ERCOT protocols.

#### *Commission response*

The commission declines to make the revision requested by Brazos Electric. As indicated by ERCOT, the reference to ERCOT protocols requested by Brazos Electric is unnecessary because ERCOT is already required to follow ERCOT protocols, except when they conflict with a higher authority such as the commission's rules.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these sections, the commission has made changes to clarify its intent.

## SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

### 16 TAC §25.53

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (West 2007 and Supp. 2013) (PURA) §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied to carry out that power; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction;

§14.003, which provides the commission with the authority to require a public utility to file a report regarding information related to the utility and to establish the form, time, and frequency of the report; §14.151, which provides the commission with the authority to prescribe the form of the records to be kept by a public utility; §14.153, which provides the commission with the authority to adopt rules governing the communication between the regulatory authority and the public utility; §31.001, which states that PURA Subtitle B was enacted to protect the public interest in establishing an adequate regulatory system to assure operations and services that are just and reasonable; §37.001, which defines an electric utility to include an electric cooperative for purposes of Chapter 37; §37.151, which provides that a certificate holder shall serve all customers within the certificated area and shall provide continuous and adequate service within that certificated area; §38.001, which provides that electric utilities and electric cooperatives shall furnish service that is safe, adequate, efficient, and reasonable; §38.002, which provides the commission with the authority to adopt reasonable standards for an electric utility to follow, to adopt rules for examining, testing, and measuring a service, and to adopt rules to ensure the accuracy of equipment; §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers, and requires electric utilities to maintain adequately trained and experienced personnel so that the utility may comply with the standards; §38.071, which provides the commission with authority to order an electric utility to provide improvements in its service; §39.101, which provides the commission with the authority to ensure that customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity; §39.151(a)(2), which requires a power region to establish an independent organization to ensure the reliability and adequacy of the regional electrical networks; §39.151(d), which requires the commission to adopt and enforce rules relating to the reliability of the regional electrical network or delegate to an independent organization responsibilities for establishing or enforcing such rules; §39.151(j), which requires a retail electric provider (REP), municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, or power generation company (PGC) to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT; §39.351, which requires a PGC to provide information required by commission rule and comply with the reliability standards adopted by an independent organization; §39.352, which requires a REP to demonstrate the financial and technical resources to provide continuous and reliable service and the resources needed to meet PURA's customer protection requirements, and to comply with all customer protection guidelines established by the commission and PURA, and §41.004, which provides the commission with jurisdiction to require electric cooperatives to report to the commission to the extent necessary to ensure the public safety.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151, 14.153, 31.001, 37.001, 37.151, 38.001, 38.002, 38.005, 38.071, 39.101, 39.151, 39.351, 39.352, and 41.004.

§25.53. *Electric Service Emergency Operations Plans.*

(a) Application. This section applies to electric utilities (including transmission and distribution utilities), power generation companies (PGCs), retail electric providers (REPs), and the Electric Reliability Council of Texas (ERCOT), collectively referred to as "market entities," and electric cooperatives. The commission intends that a mar-

ket entity or electric cooperative apply the requirements of this section in a manner that is appropriate to its particular circumstances. If a provision in this section pertaining to an emergency operation plan does not apply to a market entity or electric cooperative, the market entity or electric cooperative shall include an explanation in its emergency operations plan of why the provision does not apply.

(b) Filing requirements. A market entity shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan. A new market entity shall file with the commission a copy of its plan or a comprehensive summary before it begins commercial operations. If an electric utility, REP, or ERCOT makes a significant change to its plan, it shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the change to the plan no later than 30 days after the change takes effect. If a PGC makes a significant change to its plan that occurs during the time period November 1 through April 30, it shall file that change by June 1 and for a significant change that occurs during the time period May 1 through October 31, it shall file that change by December 1. A significant change includes but is not limited to a change that has a material impact on how the market entity would respond to an emergency.

(c) Information to be included in the emergency operations plan.

(1) An electric utility shall include in its emergency operations plans for its transmission and distribution facilities, but is not limited to, the following:

(A) A registry of critical load customers, as defined in §25.497(a)(1) - (4) of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers), directly served, if maintained by the electric cooperative. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and the process for training staff with respect to serving critical load customers.

(B) A communications plan that describes the procedures for communicating with the public, media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan shall also address the electric utility's telephone system and complaint-handling procedures during an emergency.

(C) Curtailment priorities, procedures for shedding load, rotating outages, and planned interruptions.

(D) Priorities for restoration of service.

(E) A plan to ensure continuous and adequate service during a pandemic.

(F) A plan that addresses wildfire mitigation efforts.

(G) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.

(H) A plan for the inventory of pre-arranged supplies for emergencies.

(I) A plan that addresses staffing during severe weather events.

(J) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by the Texas Department of Public Safety's Texas Division of Emergency Management (TDEM)).

(K) An affidavit from the electric utility's operations officer affirming that all relevant operating personnel of the electric utility are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency.

(L) An affidavit from the electric utility that states that its transmission and distribution emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received Federal Emergency Management Agency (FEMA) National Incident Management System (NIMS) training, specifically IS-700.a, IS 800.b, IS-100.b, and IS-200.b.

(2) An electric utility that operates an electric generation facility or a PGC shall include in its emergency operations plan for its generation facilities, but is not limited to, the following:

(A) A plan that addresses severely cold weather and severely hot weather.

(B) A plan that addresses any known critical failure points, including any effects of weather design limits.

(C) A plan that addresses an emergency shortage of water.

(D) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.

(E) A plan for the inventory of pre-arranged supplies for emergencies.

(F) A plan that addresses staffing during severe weather events.

(G) Checklists for generating facility personnel to address emergency events.

(H) A summary of alternative fuel and storage capacity.

(I) A plan for alternative fuel testing if the facility has the ability to utilize alternative fuels.

(J) Priorities for recovery of generation capacity.

(K) A pandemic preparedness plan.

(L) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by TDEM).

(M) An affidavit from an owner, partner, officer, manager, or other official with responsibility for the PGC's operations affirming that all relevant operating personnel of the PGC are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency.

(3) A REP shall include in its emergency operations plan, but is not limited to, an affidavit from an owner, partner, officer, manager, or other official with responsibility for the REP's operations affirming that the REP is prepared to implement the plan in the event of an emergency affecting the REP.

(4) ERCOT shall include in its emergency operations plan, but is not limited to, an affidavit from its operations officer affirming the following:

(A) ERCOT maintains crisis communications procedures that address communicating with the public, media, governmental entities, and market participants concerning events that affect the bulk electric system;

(B) ERCOT maintains a business continuity plan that addresses returning to normal operations after disruptions caused by a natural or manmade emergency; and

(C) ERCOT maintains a pandemic preparedness plan.

(d) Drills. A market entity shall conduct or participate in one or more drills annually to test its emergency procedures if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If a market entity is in a hurricane evacuation zone (as defined by TDEM), at least one of the annual drills shall include a test of its hurricane plan/storm recovery plan. Following the annual drills, the market entity shall assess the effectiveness of the drill and modify its emergency operations plan as needed. An electric utility that provides retail delivery service to retail electric providers or makes retail sales to end-use customers shall notify commission staff using the method and form prescribed by commission staff, as described on the commission's website, and the appropriate TDEM District Coordinators in the electric utility's service area by email or other written form of the date, time, and location at least 30 days prior to the date of at least one drill each year.

(e) Emergency contact information. A market entity shall submit emergency contact information using the method and form prescribed by commission staff, as described on the commission's website. A market entity shall notify commission staff regarding a change to its emergency contact information within 30 days of the change.

(f) Reporting requirements. Upon request by commission staff during an activation of the State Operations Center (SOC) by TDEM, an affected market entity shall provide updates on the status of operations, outages, and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff. After an emergency event declared by the Governor of the State of Texas or the President of the United States of America, commission staff may require an affected market entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

(g) Copy available for inspection. A market entity shall make available a complete copy of its emergency operations plan at its main office for inspection by the commission staff upon request.

(h) Electric cooperatives.

(1) Application. This subsection applies to an electric cooperative that operates generation, transmission, and/or distribution facilities

(2) Reporting Requirements. An electric cooperative shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan. A new electric cooperative shall file with the commission a copy of its plan or a comprehensive summary before it begins commercial operations. The filing shall also include an affidavit from the electric cooperative's operations officer affirming that all relevant operating personnel of the electric cooperative are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plan except to the extent deviations are appropriate under the circumstances during the course of an emergency. If an electric cooperative makes



a significant change to its emergency operations plan, it shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the change to the plan no later than 30 days after the change takes effect. A significant change to a plan includes, but is not limited to, a change that has a material impact on how the electric cooperative would respond to an emergency.

(3) Information to be included in the emergency operations plan. An electric cooperative's emergency operations plan shall include, but is not limited to, the following:

(A) A registry of critical load customers, as defined in §25.497(a)(1) - (4) of this title, directly served, if maintained by the electric cooperative. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and the process for training staff with respect to serving critical load customers.

(B) A communications plan that describes the procedures for communicating with the public, the media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan shall also address the electric cooperative's telephone system and complaint-handling procedures during an emergency.

(C) Curtailment priorities, procedures for shedding load, rotating outages, and planned interruptions.

(D) Priorities for restoration of service.

(E) A plan to ensure continuous and adequate service during a pandemic.

(F) A plan that addresses wildfire mitigation efforts.

(G) A plan for identification of potentially severe weather events, including but not limited to tornadoes, hurricanes, severely cold weather, severely hot weather, and flooding.

(H) A plan for the inventory of pre-arranged supplies for emergencies.

(I) A plan that addresses staffing during severe weather events.

(J) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone, as defined by TDEM).

(K) A statement from an electric cooperative that directly serves retail customers of whether or not its emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received Federal Emergency Management Agency (FEMA) National Incident Management System (NIMS) training, specifically IS-700.a, IS-800.b, IS-100.b, and IS-200.b.

(4) In addition to the information required by paragraph (3) of this subsection, an electric cooperative that operates an electric generation facility shall include, but is not limited to, the following information in its emergency operations plan:

(A) A plan that addresses severely cold weather and severely hot weather.

(B) A plan that addresses any known critical failure points, including any effects of weather design limits.

(C) A plan that addresses an emergency shortage of water.

(D) Checklists for generating facility personnel to address emergency events.

(E) A summary of alternative fuel and storage capacity.

(F) A plan for alternative fuel testing if the facility has the ability to utilize alternative fuels.

(G) Priorities for recovery of generation capacity.

(5) Preparedness Review. An electric cooperative shall conduct one or more reviews annually of its emergency procedures with key emergency operations personnel if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If the electric cooperative is in a hurricane evacuation zone, at least one of the annual reviews shall include its hurricane plan/storm recovery plan. Following the annual preparedness reviews, the electric cooperative shall assess the effectiveness of the review and modify its emergency operations plan as needed. An electric cooperative that directly serves retail customers shall notify commission staff using the method and form prescribed by commission staff, as described on the commission's website, and the appropriate TDEM District Coordinators by email or other written form, of the location, date, and time at least 30 days prior to the date of at least one review each year.

(6) Emergency contact information. An electric cooperative shall submit emergency contact information using the method and form prescribed by commission staff, as described on the commission's website. An electric cooperative shall notify commission staff regarding a change to its emergency contact information within 30 days of the change.

(7) Reporting requirements. Upon request by commission staff during an activation of the SOC by TDEM, an affected electric cooperative shall provide updates on the status of operations, outages, and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff. After an emergency event declared by the Governor of State of Texas or the President of the United States of America, commission staff may require an affected electric cooperative to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

(8) Copy available for inspection. An electric cooperative shall make available a complete copy of its emergency operations plan at its main office for inspection by commission staff upon request.

(i) Effective date. The effective date of the amendments made to this section in Project Number 39160 is March 31, 2015 for market entities and June 1, 2015 for electric cooperatives.

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 June 6, 2014.

TRD-201402642

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: June 26, 2014

Proposal publication date: February 7, 2014

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



SUBCHAPTER O. UNBUNDLING AND  
MARKET POWER  
DIVISION 2. INDEPENDENT ORGANIZA-  
TIONS

16 TAC §25.362

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated (West 2007 and Supp. 2013) (PURA) §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied to carry out that power; §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.003, which provides the commission with the authority to require a public utility to file a report regarding information related to the utility and to establish the form, time, and frequency of the report; §14.151, which provides the commission with the authority to prescribe the form of the records to be kept by a public utility; §14.153, which provides the commission with the authority to adopt rules governing the communication between the regulatory authority and the public utility; §31.001, which states that PURA Subtitle B was enacted to protect the public interest in establishing an adequate regulatory system to assure operations and services that are just and reasonable; §37.001, which defines an electric utility to include an electric cooperative for purposes of Chapter 37; §37.151, which provides that a certificate holder shall serve all customers within the certificated area and shall provide continuous and adequate service within that certificated area; §38.001, which provides that electric utilities and electric cooperatives shall furnish service that is safe, adequate, efficient, and reasonable; §38.002, which provides the commission with the authority to adopt reasonable standards for an electric utility to follow, to adopt rules for examining, testing, and measuring a service, and to adopt rules to ensure the accuracy of equipment; §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to retail customers, and requires electric utilities to maintain adequately trained and experienced personnel so that the utility may comply with the standards; §38.071, which provides the commission with authority to order an electric utility to provide improvements in its service; §39.101, which provides the commission with the authority to ensure that customer protections are established to entitle a customer to safe, reliable, and reasonably priced electricity; §39.151(a)(2), which requires a power region to establish an independent organization to ensure the reliability and adequacy of the regional electrical networks; §39.151(d), which requires the commission to adopt and enforce rules relating to the reliability of the regional electrical network or delegate to an independent organization responsibilities for establishing or enforcing such rules; §39.151(j), which requires a retail electric provider (REP), municipally owned utility, electric cooperative, power marketer, transmission and distribution utility, or power generation company (PGC) to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT; §39.351, which requires a PGC to provide information required by commission rule and comply with the reliability standards adopted by an independent organization; §39.352, which requires a REP to demonstrate the financial and technical resources to provide continuous and reliable service and the resources needed to meet PURA's customer protection requirements, and to comply with all customer

protection guidelines established by the commission and PURA, and §41.004, which provides the commission with jurisdiction to require electric cooperatives to report to the commission to the extent necessary to ensure the public safety.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.003, 14.151, 14.153, 31.001, 37.001, 37.151, 38.001, 38.002, 38.005, 38.071, 39.101, 39.151, 39.351, 39.352, and 41.004.

§25.362. *Electric Reliability Council of Texas (ERCOT) Governance.*

(a) Purpose. This section provides standards for the governance of an independent organization within the ERCOT region.

(b) Application. This section applies to ERCOT or any other organization within the ERCOT region that qualifies as an independent organization under PURA §39.151.

(c) Adoption of rules by ERCOT and commission review. ERCOT shall adopt and comply with procedures concerning the adoption and revision of ERCOT rules.

(1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and, in the case of market protocols, operating guides, planning guides, and market guides, an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.

(2) ERCOT staff, the independent market monitor, and the commission's reliability monitor may comment on any proposed change in ERCOT rules that affects the operation and competitiveness of markets operated by ERCOT or reliability of the electric network in ERCOT.

(3) If the findings of a commission-mandated audit of ERCOT operations or governance indicate the need for a change in operating practices or procedures or governance rules, ERCOT shall develop and submit to the commission a plan for implementing the changes. ERCOT shall implement the plan, as approved by the commission. Commission-mandated audits, as contemplated in PURA §39.151(d) and (d-1), shall be funded by ERCOT and do not require approval by the governing board of ERCOT.

(4) The commission may review a provision of ERCOT's articles of incorporation or by-laws, or a new or amended ERCOT rule on the application of an interested person, including commission staff and the Office of Public Utility Counsel.

(5) The commission shall process requests for review of a provision of ERCOT's articles of incorporation or by-laws, a new or amended ERCOT rule, or ERCOT decision in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). A request for review under this subsection initiated by the commission, commission staff, or the Office of Public Utility Counsel is not subject to the alternative dispute resolution requirements in §22.251(c) of this title, which requires the use of Section 20 of the ERCOT Protocols (Alternative Dispute Resolution Procedures), Section 21 of the Protocols (Process for Protocol Revision), or other applicable ERCOT procedures. In addition, the commission may, for good cause, waive the requirement that a complaint be filed within the time prescribed in §22.251(d) of this title.

(d) Access to meetings. ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures shall include provisions on advance notice of the time, place, and topics to be discussed during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the governing board

shall be retained permanently, and ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.

(e) Access to information. This subsection governs access to information held by ERCOT.

(1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to relating to the governance and budget of the organization, market operations, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT shall notify the requester of the expected delay and the anticipated date that the information may be available. ERCOT's procedures regarding access to records shall be consistent with this chapter and commission orders.

(A) Information submitted to or collected by ERCOT pursuant to requirements of ERCOT rules shall be protected from public disclosure only if it is designated as Protected Information pursuant to ERCOT rules, except as otherwise provided in this subsection.

(B) ERCOT shall promptly respond to a request from the commission, a commissioner, a commissioner's designee, the commission executive director, or the executive director's designee for information that ERCOT collects, creates or maintains, in order to provide the commission access to information that the commission, a commissioner, a commissioner's designee, the executive director, or the executive director's designee determines is necessary to carry out the commission's responsibilities for oversight of ERCOT and the wholesale and retail markets.

(C) In the absence of a request for information under the Texas Public Information Act, Texas Government Code Annotated, the commission staff may seek to release information that the commission has in its possession or has access to that has been designated as Protected Information under ERCOT rules, and the commission may determine the validity of the asserted claim of confidentiality through a contested-case proceeding. In a contested-case proceeding conducted by the commission pursuant to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under law.

(D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of the assertion.

(2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in the Texas Public Information Act.

(f) Conflicts of interest. ERCOT shall adopt policies to ensure that its operations are not affected by conflicts of interests relating to its employees' outside employment and financial interests and its contractors' relationships with other businesses. These policies shall include an obligation to protect confidential information obtained by virtue of employment or a business relationship with ERCOT.

(g) Qualifications, selection, and removal of members of the governing board. ERCOT shall establish and implement criteria for an

individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) The qualification criteria shall include:

(A) Definitions of the market sectors;

(B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.

(2) The procedures for removal of a member from service on the governing board shall include:

(A) Procedures for determining whether an organization or individual meets the criteria adopted under paragraph (1) of this subsection; and

(B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer meets the criteria adopted under paragraph (1) of this subsection or violates an ERCOT rule, including a written ERCOT policy adopted under this section, or commission rule, or applicable statute.

(3) The procedures adopted under paragraph (2) of this subsection shall:

(A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection or has violated an ERCOT rule, including a written ERCOT policy adopted under this section, or commission rule, or applicable statute; and

(B) Specify how decisions concerning the qualification of an individual or whether an individual has violated an ERCOT rule or written ERCOT policy or procedure adopted under this section, or commission rule, or applicable statute will be made.

(4) A decision concerning an individual or organization's qualification or an individual's removal from the governing board is subject to review by the commission.

(5) ERCOT shall notify the commissioners when a vacancy occurs for an unaffiliated member of the governing board. ERCOT shall provide information to the commissioners concerning the process for selecting a new member, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. The selection of an unaffiliated member of the governing board is subject to approval by the commission. A person who is selected may not serve as a member of the governing board until the commission approves the selection. An unaffiliated board member whose three-year term has expired shall, if reappointed by the ERCOT governing board, cease serving as a member of the governing board until the reappointment is approved by the commission. The commission may remove an unaffiliated member of the governing board for cause. Compensation, per diem and travel reimbursements to be paid to unaffiliated members of the governing board shall be subject to commission review and approval. As used in this paragraph, "cause" shall mean:

(A) a violation of a commission rule or applicable statute, an ERCOT rule, or written ERCOT policy or procedure adopted under this section;

(B) a director is indicted or charged with a felony or is convicted of a misdemeanor involving moral turpitude;

(C) conduct inconsistent with a director's fiduciary duty to ERCOT or that may reflect poorly upon the board or ERCOT; or

(D) a fundamental disagreement with the commission as to the policies or procedures that ERCOT shall adopt, in each case as determined by the commission at its sole discretion.

(6) A member of the governing board of ERCOT appointed after the effective date of this paragraph who serves as an unaffiliated member may not represent a market participant before the governing board of ERCOT, the ERCOT technical advisory committee, or any of its subcommittees or working groups, for a period of one year after the person ceases to serve as a member of the governing board.

(h) Chief executive officer. The appointment of the chief executive officer of ERCOT is subject to commission approval. ERCOT shall notify the commissioners when a vacancy occurs for the chief executive officer. ERCOT shall provide information to the commissioners concerning the process for selecting a new chief executive officer, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. A person may not seek the position of the ERCOT chief executive officer while serving as a commissioner. Compensation to be paid to the ERCOT chief executive officer shall be subject to commission review and approval.

(i) Required reports and other information. ERCOT shall file with the commission the reports and provide the information required by this subsection.

(1) The qualification criteria shall include:

(A) Definitions of the market sectors;

(B) Levels of activity in the electricity business in the ERCOT region that an organization in a market sector must meet, in order for a representative of the organization to serve as a member of the governing board;

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; and

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board.

(2) Operations report and plan. No later than January 15 of each year, ERCOT shall file an operations report and plan. The commission may initiate a review of the plan, at its discretion. The report and plan shall contain the following information:

(A) A copy of an independent audit of ERCOT's market operation for the report year;

(B) A summary of key market operations statistics, including prices and quantities of energy and capacity purchased in the markets operated by ERCOT;

(C) A summary of key reliability statistics;

(D) A summary of transmission planning and generation interconnection activities and the most recent report on capacity, demand and reserves;

(E) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, operation of energy and capacity markets, managing transmission congestion, transmission planning and interconnection of new generating plants, and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail electric providers and to the North American Electric Reliability Corporation and Texas Reliability Entity;

(F) A risk management plan that identifies any significant risks to system reliability, the operation of ERCOT's energy and capacity markets, its management of transmission congestion, and any other risks that would significantly disrupt the sale and delivery of electricity within the ERCOT region, and the measures that might be taken to mitigate such risks;

(G) An emergency communications plan that describes how ERCOT will communicate with the public, media, governmental entities, and market participants concerning events that affect the bulk electric system;

(H) An assessment of the reliability and adequacy of the ERCOT system during extremely cold or extremely hot weather conditions, or drought, for which purpose ERCOT has the right, upon reasonable notice, to conduct generator site visits to review compliance with weatherization plans and has the right to obtain from generators any information concerning water supplies for generation purposes, including contracts, water rights, and other information; and

(I) Identification of existing and potential transmission constraints, and the need for additional transmission, generation or demand response resources within the ERCOT region. The report shall include projections of changes in demand, the capability of generation, energy storage, and demand response resources, projected reserve margins, alternatives for meeting system needs, and recommendations for meeting system needs.

(3) Quarterly reports. ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:

(A) Any internal audit reports that were produced during the reporting quarter;

(B) A report on performance measures, as prescribed by the commission;

(C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:

(i) ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;

(ii) An explanation for expenditures deviating from the original funding allocation for the particular account item;

(iii) For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and

(D) Any other information the commission may deem necessary.

(4) Emergency reports. If ERCOT management becomes aware of any event or situation that could reasonably be anticipated to adversely affect the reliability of the regional electric network; the operation or competitiveness of the ERCOT market; ERCOT's performance of activities related to the customer registration function; or the public's confidence in the ERCOT market or in ERCOT's performance of its duties, ERCOT management shall immediately notify the chair-

man of the commission, or the chairman's designee, and the executive director of the commission, or the executive director's designee, by telephone. Additionally, ERCOT shall file a written report of the facts involved by the end of the following business day after becoming aware of such event or situation, unless the executive director specifies, in writing, that the report may be delayed. The executive director may not authorize a delay of more than 30 days for filing the required written report. For good cause, the commission may grant further delays in filing the required report. If it determines that additional reports are necessary, the commission may establish a schedule for the filing of additional reports after the initial written report by ERCOT. As a part of any additional written report, ERCOT may be required to fully explain the facts and to disclose any actions it has taken, or will take, in order to prevent a recurrence of the events that led to the need for filing an emergency report.

(5) Meeting Periodicity Report. Beginning with the effective date of this section, ERCOT shall recommend annually to the commission the periodicity of governing board meetings. ERCOT's recommendation shall be based on an examination of the frequency of meetings conducted by similar organizations and shall include an estimate of the costs associated with meeting more frequently than once per quarter.

(j) Compliance with rules or orders. ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, any provision of this chapter, or a commission order. If ERCOT fails to comply with PURA, any provision of this chapter, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.

(1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.

(2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.

(3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.

(4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.

(5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.

(6) Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.

(k) Priority of commission rules. This section supersedes any protocols or procedures adopted by ERCOT that conflict with the provisions of this section. The adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of 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.

Filed with the Office of the Secretary of State on June 6, 2014.

TRD-201402643

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: June 26, 2014

Proposal publication date: February 7, 2014

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

◆ ◆ ◆  
SUBCHAPTER K. RELATIONSHIPS WITH  
AFFILIATES

**16 TAC §25.272**

The Public Utility Commission of Texas (commission) adopts an amendment to §25.272, relating to Code of Conduct for Electric Utilities and Their Affiliates, with changes to the proposed text as published in the January 3, 2014, issue of the *Texas Register* (39 TexReg 25). The amendment to the rule will delete an expired section, update a marketing provision, and modify the compliance audit requirement for electric utilities without affiliates. The amendments are competition rules subject to judicial review as specified in the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.001(e) (West 2007 and Supp. 2013) (PURA). This amendment is adopted under Project Number 41616.

The commission received comments on the proposed amendment from Texas New Mexico Power Company (TNMP), CenterPoint Energy, Inc. (CenterPoint), the Office of Public Utility Counsel (OPUC), the REP Coalition, and jointly by AEP Texas Central Company, AEP Texas North Company, and Electric Transmission Texas, LLC. The REP Coalition consists of: Alliance for Retail Markets (ARM); Reliant Energy Retail Services; the Texas Energy Association of Marketers (TEAM); First Choice Power Special Purpose, LP; CPL Retail Energy, LP; WTU Retail Energy, LP; and TXU Energy Retail Company LLC. Members of ARM participating in this proceeding are: Direct Energy, LP; Green Mountain Energy Company; MidAmerican Energy Company; and Noble Americas Energy Solutions, LLC. Members of TEAM participating in this proceeding are Accent Energy d/b/a IGS Energy; Cirro Energy; DPI Energy (d/b/a Trusmart); Entrust Energy; Just Energy; Spark Energy; StarTex Power; Stream Energy; and TriEagle Energy. Reply comments were received from CenterPoint and the REP Coalition, as well as AEP Energy, Inc. (AEP Energy), the Steering Committee of Cities Served by Oncor (Oncon Cities), and from AEP Texas Central Company and AEP Texas North Company (together AEP Texas). AEP Energy is a competitive retail electric provider authorized to do business under the names Bluestar Energy Solutions and Bluestar Energy Services, Inc. and is a competitive affiliate of AEP Texas.

*General Comments*

TNMP supported the proposed revisions and stated that they promoted efficiency and advanced the over-arching goal of prohibiting market abuse between utilities and their competitive affiliates. CenterPoint asserted that the rule is effective as it currently exists and that it effectively tracks the language in PURA, but noted that it had no objections to the published amendments. OPUC summarized the recent commission docket history that led to re-examination of the rule and noted that the rule performs a vital role in customer protection and the maintenance of competition. OPUC agreed with the general approach of the commission's proposal but emphasized the commission's broad authority to address market power and protect customers when

specific circumstances arise, including authority to require disclaimers when necessary. As discussed below, the REP Coalition offered comments and specific language that would prohibit all co-branding between a utility and a competitive affiliate. AEP Energy and AEP Texas supported updates to the rule language.

#### *Commission response*

The commission appreciates the comments it has received from stakeholders throughout this process and agrees with OPUC that the commission retains broad authority under the rule as revised to address market power and customer protection issues.

#### *Subsection (c)*

The REP Coalition advocated for the addition of a new definition in subsection (c) as follows:

(3) Competitive electric service--The sale, provision, presentation, or comparison of retail electric or electric-related products or offerings to or for the benefit of end-use customers in a competitive market.

As discussed below, the REP Coalition advocated for an express prohibition on the sharing of branding features between electric utilities and their competitive affiliates that are engaged in competitive electric service. The REP coalition argued that joint branding in electric markets must be prohibited in order to comply with the statutory requirements of PURA Chapter 39. The REP Coalition offered a definition of "competitive electric service" in subsection (c) that would support the express prohibition language that it offered in subsection (h)(1).

#### *Commission response*

The commission disagrees with the REP Coalition that it is necessary to modify the rule to add a definition for "competitive electric service." The term "competitive affiliate" is already defined within the rule, and the concepts contained within the REP Coalition's proposed definition of "competitive electric service" are largely already encompassed within the definition of "competitive affiliate." Therefore, the commission declines to modify the rule to add a definition for "competitive electric service."

#### *Subsection (h)(1)*

OPUC stated that the deletion of this subsection was appropriate because the disclaimer provision had expired in 2005, and emphasized that the commission is not prohibited from seeking such disclaimers under certain circumstances through its authority under PURA §39.101 or §39.157.

In their initial comments, CenterPoint, TNMP, and AEP Texas had no objections to the proposed revision of subsection (h)(1). In addition, CenterPoint noted that it has had a comprehensive code of conduct compliance program in place for fifteen years, and that the company's compliance has been reviewed multiple times by internal and external auditors with publicly filed audits.

In its initial comments, the REP Coalition agreed that the current subsection language should be deleted but proposed that new language should replace it as follows:

(h) Safeguards relating to joint marketing and advertising.

(1) A utility shall not share the same brand, logo, or any identifying brand feature with a competitive affiliate engaged in competitive electric service in Texas, nor shall a utility allow the use of its brand, logo, service mark, or any identifying brand feature by such affiliates. For purposes of this section, use or sharing includes, but is not limited to, shared domain names (including

employee e-mail addresses), social media links, digital applications, or any promotional materials or advertising. Utilities may allow disclosure of their affiliation with competitive affiliates in other communications to the extent that such communications do not constitute joint marketing and advertising.

The REP Coalition stated that since the commission's adoption of the Code of Conduct in 1999, the commission has not undertaken a comprehensive review of the efficacy of §25.272 in its current form. The REP Coalition stated that as the electric market has developed in this fifteen year period, critical issues with respect to the Code of Conduct rule have arisen as some market participants have attempted to use the same brand identity for monopoly utility services and competitive electric services offered by affiliated entities. The REP Coalition argued that these attempts impact retail electric providers in a manner inconsistent with the purpose of the Code of Conduct rule to avoid potential market-power abuses.

The REP Coalition provided its perspective on the rule background: in Docket No. 40636, *Petition for Declaratory Ruling Regarding CenterPoint Energy Houston Electric, LLC Joint Advertising with a Competitive Affiliate*, the commission declined to grant the declaratory order but directed Commission Staff to open a broad rulemaking to consider the issues regarding the joint marketing of a regulated utility and its competitive affiliates and to avoid having to address such issues on a case by case basis. The REP Coalition also noted that in Docket No. 39509, *Application of AEP Texas Commercial & Industrial Retail Limited Partnership for Amendment to a Retail Electric Provider Certification*, the commission denied retail electric provider certification for an entity affiliated with AEP Texas Central Company and AEP Texas North Company that proposed to use the name "AEP Retail Energy."

The REP Coalition argued that the proposed rule for publication falls significantly short in addressing the important operational and enforcement issues raised in these cases. The REP Coalition argued that the revisions do not achieve the much-needed clarity and certainty that modifications such as those proposed by the REP Coalition would achieve. The REP Coalition argued that it is critical for the commission in this rulemaking proceeding to clarify that a utility may not leverage its monopoly status and confer an unfair competitive advantage to its affiliates providing competitive electric service. Specifically, the REP Coalition argued that the Code of Conduct rule should ensure that a utility does not promote or provide an advantage to its competitive affiliates operating in the electric industry either by allowing those affiliates to share the utility's name, logo or branding or by giving the appearance, through use of the internet, social media or otherwise, that the utility endorses the service offered by such affiliates. The REP Coalition suggested that amendments to the code of conduct rule that clarify how competitive affiliates must be marketed and operated separately and independently from the utility will provide market participants greater clarity and certainty with respect to conduct in the market and will ensure that the benefits of a fully competitive market.

The REP Coalition stated that PURA Chapter 39 includes a number of provisions to transition the electricity market from one of vertically integrated utilities with monopoly service areas to a competitive market where retail electric providers - some affiliated with a transmission and distribution utility and others independent - compete to serve customers. The REP Coalition stated that to enforce the restructuring of the market, PURA

§39.157 gives the commission responsibility and authority to monitor activities that would impair the market.

The REP Coalition argued that any amendments to the rule must further the policies and comport with the statutory requirements of PURA Chapter 39, specifically in prohibiting the use of monopoly brands to promote competitive electric services provided by affiliate companies in a manner that provides an unfair competitive advantage that is incompatible with the normal forces of competition.

The REP Coalition argued that the proposed amendments are only cosmetic and do not address issues that have arisen in the competitive marketplace. The REP Coalition argued that its substantive amendment is needed if critical issues related to the co-branding of and joint marketing by regulated utilities and their competitive affiliates are to be more efficiently resolved through the rule and not left to the Commission to determine on a case-by-case basis as they arise through the contested case process.

The REP Coalition laid out several hypotheticals to illustrate the types of names and logos that could be shared between utilities and competitive affiliates under regulatory schemes that permitted: (1) unfettered co-branding; (2) limited name and logo sharing; and (3) no co-branding. The hypotheticals show utility and competitive affiliate names and logos with varying levels of similarity in name and appearance.

The REP Coalition argued that the provisions in PURA §39.157(d)(6) (joint advertising or promotional activities), (d)(7) (sharing of resources), and (d)(11) (subsidization of an affiliate with revenues from a regulated service) are only effectuated by a rule that prohibits all co-branding. The REP Coalition acknowledged, however, that several of its own hypothetical examples show that even if the rule is revised to clarify that utilities cannot jointly advertise and share marketing resources with their competitive affiliates, some degree of scrutiny of how utilities operate and promote their affiliates will always be necessary to ensure that their monopoly market power is not being abused. The REP Coalition contended that its amendments would effectuate an electric market in which all joint branding is prohibited. According to the REP Coalition, a complete prohibition on branding is the only scenario that fully comports with the statutory requirements precluding utilities and their competitive affiliates from engaging in the joint marketing, cross-promotion, and improper subsidization of competitive services by a regulated utility.

The REP Coalition predicted that stakeholders may raise constitutional objections to their proposal. The REP Coalition argued that the constitutionality of restrictions on commercial speech is subject to an intermediate level of scrutiny, under which courts have held that misleading commercial speech is not protected. The REP Coalition argued that the necessity of regulating commercial speech to prevent unfair competitive advantage that can be realized by co-branding is demonstrated in the record evidence of Docket No. 39509 in the form of a survey showing that customers were confused and misled. The REP Coalition argued that because the evidence in Docket No. 39509 demonstrated that customers were confused and misled by shared branding, regulation of shared branding is constitutionally sound.

The REP Coalition cited *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980), for the proposition that if commercial speech is not unlawful or

misleading, it may still be regulated if: (1) the asserted governmental interest is substantial; (2) the regulation directly advances the governmental interest asserted; and (3) whether the regulation is more extensive than necessary to serve that interest. The REP Coalition argued that joint branding does confuse and mislead consumers and therefore prohibition of joint branding does not impinge any First Amendment commercial speech rights. Alternatively, the REP Coalition argues that its proposed amendment still satisfies the *Central Hudson* test because: (1) there is a substantial government interest expressed in PURA to implement a competitive retail market; (2) the prohibition of joint advertising advances the governmental interest in maintaining separation of the entities business operations; and (3) there is no effective and less restrictive alternative for addressing the problems with co-branding than a prohibition of all co-branding between utilities and competitive affiliates.

In reply comments, AEP Texas stated that the Code of Conduct prohibits control by a utility over the actions of a competitive affiliate. AEP Texas argued that the REP Coalition's proposal prohibits a utility from allowing a competitive affiliate to engage in certain activities, but in fact utilities like AEP Texas are prohibited by the Code of Conduct from controlling the activities of competitive affiliates. AEP Texas also argued that Docket No. 39509 is currently on appeal, and it would therefore be premature to incorporate language in the rule that is even more restrictive than the commission's ruling in Docket No. 39509. Furthermore, AEP Texas noted that in Docket No. 39509 the commission expressly found that nothing in PURA categorically prohibits sharing of the same or similar names.

AEP Energy stated in reply comments that the commission already determined in Docket No. 39509 that PURA does not authorize the REP Coalition's proposed rule. Furthermore, AEP Energy stated that the commission determined in Docket No. 40636 that the question of whether shared branding by utilities and their competitive affiliates constitutes joint advertising or promotional activities that favor competitive affiliates in violation of PURA is a question of fact. AEP Energy argued that the REP Coalition simply ignores this precedent.

AEP Energy argued that the only subsection of PURA §39.157(d) that applies to sharing of common branding is PURA §39.157(d)(5)(B), and that subsection clearly authorizes the use of shared branding. AEP Energy argued that the termination of the disclaimer requirement in 2005 simply ends the requirement to use a disclaimer and permits shared branding without a disclaimer thereafter. AEP Energy argued that it would make no sense for the Legislature to expressly allow shared branding with a disclaimer when the market was new, and then impliedly prohibit that shared branding once the market became established.

AEP Energy further argued that there exists a less restrictive alternative to a total ban - the use of a disclaimer. AEP Energy argued that a total ban would violate utilities constitutional commercial speech rights when a less restrictive alternative has already been presented by the Legislature. AEP Energy finally noted the pending appeal of Docket No. 39509 and requested that the commission delay consideration of the proposed rule until after a final decision in the appeal is rendered.

In reply comments, CenterPoint argued that the commission had already considered and rejected such a categorical prohibition on joint branding in Docket No. 39509 and found that the sharing of identical branding constituted prohibited joint advertising based on the facts in that case. The commission reiterated in

Docket No. 40636 that the question of whether shared branding is prohibited by PURA is a question of fact. CenterPoint argued that the REP Coalition nevertheless ignores the commission's discussion and precedent from those cases.

CenterPoint stated that shared branding is not new to the Texas market. CenterPoint stated that utilities such as TXU, CenterPoint, and AEP have shared common names with affiliated retail electric providers and competitive affiliates at various times since the market opened. CenterPoint provided examples of the shared branding.

CenterPoint also argued that a blanket prohibition on all joint branding would be an overly restrictive regulation of constitutional commercial speech rights. CenterPoint argued that contrary to the impression left by the REP Coalition, the commission never reached the constitutional questions raised in Docket No. 40636.

CenterPoint cited a number of cases for the propositions that government must seek to limit its restrictions on commercial speech, and that the restrictions must seek to address speech that is actually misleading, rather than seeking to "keep people in the dark for their own good." CenterPoint emphasized that in order for commercial speech to be found actually misleading, there must be a record with evidence that customers were actually misled. CenterPoint argued that it is inappropriate to look at the record of Docket No. 39509, a particular case decided on the basis of particular facts, in order to find support for a blanket ban on co-branding in all cases.

In their reply comments, the REP Coalition presented a number of factual allegations of co-branding activities currently being employed by a utility. The REP Coalition argued that these co-branding activities are unambiguous violations of at least six subsections of PURA §39.157, and that the rule should be amended in accordance with the REP Coalition recommendation to clarify that co-branding activities are prohibited.

The REP Coalition also argued that CenterPoint's initial comments raised an argument that no changes to the rule are needed because CenterPoint's audit results have found that the company is acting in compliance with PURA and commission rules. The REP Coalition argued that the audits performed by third parties hired by utilities only evaluate compliance with each utility's internal interpretation of the existing rule, and to the extent the commission has not provided clear guidance on the rule's meaning with respect to a given issue, the utility's audit invariably concludes that the utility is in compliance as to that issue. The REP Coalition argued that audits are not substitutes for a revision of the rules.

OPUC's comments supported Staff's rule amendments, and emphasized that the commission retains the authority to require disclaimers to be used in specific cases where co-branding may be problematic. The Oncor Cities filed reply comments indicating their support for the reasoning and rule language presented by the REP Coalition. The Oncor Cities also supported OPUC's statement that the commission retains the ability to require disclaimers to prevent customer confusion.

#### *Commission response*

The commission disagrees with the REP Coalition that it is necessary to modify subsection (h) to add a provision prohibiting all joint branding between utilities and competitive affiliates.

The existing provisions in PURA §39.157 and §25.272 provide important and potent tools that can effectively address the hy-

potheticals raised by the REP Coalition. In fact, these existing provisions were used to prevent a proposed co-branding activity in Docket No. 39509.

In addition, these statutory and rule provisions are clearly qualified in that the actions described are only prohibited when performed "in a manner that favors the competitive affiliate." The rule language proposed by the REP Coalition would effectively eliminate this qualifier, prohibiting all co-branding regardless of whether it favors a competitive affiliate. For example, the REP Coalition language would prohibit co-branding between a small transmission and distribution utility (TDU) and a competitive affiliate operating far away from the TDU's service territory in an area in which there are few or no consumers that even recognize the TDU brand.

The commission does not concur with the REP Coalition's position that every shared use of branding between a utility and a competitive affiliate is a violation of the joint marketing restrictions in PURA §39.157. In fact, the open meeting discussion attached to the REP Coalition's comments showed that while the commission wanted to look broadly at the rule, a broad and blanket prohibition on any joint use of branding features was not the purpose of the rulemaking. The commission views the statute to allow the commission the discretion to review the specific circumstances of a given case and take appropriate measures to protect customers and prevent market abuses. The REP Coalition appears to concede that even without the proposed REP Coalition amendments, PURA gives the Commission the tools it needs to examine potential abuses as they arise.

The hypothetical and alleged branding uses described by the REP Coalition hint at the tremendous number of subtle variations that could be employed to create just enough difference in branding to circumvent a specific, express prohibition on using the "same" brand, logo, or brand feature. As seen in litigation surrounding trademarks, and as acknowledged in the REP Coalition comments, the enormous creativity and variation that is used in marketing efforts in a competitive marketplace would necessitate a flexible approach to regulation that can accommodate consideration of the particular facts of a given case and the need for prohibition of a particular use, even if there was a rule with a broad prohibition on use of the "same" branding features.

The commission agrees with OPUC that the deletion of this subsection was appropriate because the disclaimer provision had expired in 2005.

The commission reserves its authority to examine such matters as they arise and declines to modify subsection (h) as proposed by the REP Coalition to prohibit all joint branding between utilities and competitive affiliates.

#### *Subsection (h)(1)(B)*

The REP Coalition also proposed the following change for the language of subsection (h)(1)(B)(vi) and a new subsection (h)(1)(B)(vii):

(B) A utility shall not engage in joint marketing, advertising, or promotional activities of its products or services with those of a competitive affiliate in a manner that favors the affiliate. Such joint marketing, advertising, or promotional activities include, but are not limited to, the following activities:

(vi) providing links from all of the utility's web site and social media platforms to those of its competitive affiliates; and



(vii) allowing competitive affiliate to act or appear to act on behalf of utility in any communications and contacts with existing or potential customers.

The REP Coalition did not provide a discussion of the reasons for its proposals in clauses (vi) and (vii).

AEP Texas proposed revising the language in clause (vi) to read: "providing links from the utility's web site and social media platforms to the web site and social media platforms of its competitive affiliates." AEP Texas explained that it understood the intent of the proposed amendment to be to encompass social media as it has and continues to evolve. However, AEP Texas noted that the commission's proposed language could be construed as prohibiting a utility from providing links between its own web site and social media.

#### *Commission response*

The commission declines to adopt the REP Coalition's proposed modification to clause (vii). The REP Coalition's proposed language is effectively the reverse of current subsection (i), which prevents the utility from acting or appearing to act on behalf of a competitive affiliate. The commission finds that the REP Coalition's proposed clause (vii) is overly restrictive, in that it may prevent a competitive affiliate from engaging in otherwise permissible activities that unaffiliated market participants regularly perform, such as retail electric providers collecting and transmitting charges for transmission and distribution service or coordinating initiation, provision, or termination of service in the normal course or in emergency situations. In addition, the proposed clause (vii) attempts to regulate competitive affiliate actions rather than utility actions, but the purpose of this portion of the rule and statute is to address utility subsidization or support of a competitive affiliate, rather than the reverse.

The commission agrees with the REP Coalition and AEP Texas that the proposed language of clause (vi) can be improved to make clear the type of links that are prohibited. Changing the language proposed by the stakeholders just slightly to use "between" instead of "from" and "to," the commission modifies clause (vi) to read: "providing links between any of a utility's websites and social media platforms, and any of the websites and social media platforms of its competitive affiliates." As noted by AEP Texas, the intent of this language is not to prohibit links between a utility's own websites and social media platforms, but rather to prohibit the links between a utility's properties and the properties of its affiliates. With that modification, the commission modifies clause (vi) as proposed by AEP Texas and the REP Coalition.

#### *Subsection (i)(3)*

TNMP noted that the amendments to this subsection promote efficiency by eliminating commission and TDU expenditure of resources upon audits and reviews in circumstances where there are no affiliate relationships. OPUC concurred in the proposed commission language.

#### *Commission response*

The commission agrees that the affidavit requirement in this subsection for utilities without affiliates prevents unnecessary expenditure and promotes administrative efficiency. Because the stakeholder comments are supportive of the proposed amendment, the commission makes no modification to this subsection.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically PURA §17.004, which authorizes the commission to adopt and enforce rules concerning REPs that protect customers against fraudulent, unfair, misleading, deceptive, or anticompetitive practices and that impose minimum service standards relating to customer deposits and termination of service; PURA §§17.051, 17.052, and 17.053, which collectively authorize the commission to adopt rules for REPs concerning certification, changes in ownership and control, customer service and protection, and reports; PURA §39.101, which authorizes the commission to adopt and enforce rules that ensure retail customer protections and entitle a customer to safe, reliable, and reasonably priced electricity, to other information or protections necessary to ensure high-quality service to customers including protections relating to customer deposits and quality of service, and to be protected from unfair, misleading, or deceptive practices, and requires the commission to ensure that its customer protection rules provide at least the same level of customer protection against potential abuses and the same quality of service that existed on December 31, 1999; and PURA §39.157, which authorizes the commission to adopt and enforce rules to govern transactions or activities between a transmission and distribution utility and its competitive affiliates to avoid potential market power abuses and cross-subsidizations between regulated and competitive activities both during the transition to and after the introduction of competition.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 17.051, 17.052, 17.053, 39.101, and 39.157.

§25.272. *Code of Conduct for Electric Utilities and Their Affiliates.*

(a) Purpose. The provisions of this section establish safeguards to govern the interaction between utilities and their affiliates, both during the transition to and after the introduction of competition, to avoid potential market-power abuses and cross-subsidization between regulated and unregulated activities.

(b) Application.

(1) General application. This section applies to:

(A) electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002(6), and transactions or activities between electric utilities and their affiliates, as defined in PURA §11.003(2); and

(B) transmission and distribution utilities operating in a qualifying power region in the State of Texas as defined in PURA §31.002(19) upon commission certification of a qualifying power region pursuant to PURA §39.152, and transactions or activities between transmission and distribution utilities and their affiliates, as defined in PURA §11.003(2).

(2) No circumvention of the code of conduct. An electric utility, transmission and distribution utility, or competitive affiliate shall not circumvent the provisions or the intent of PURA §39.157 or any rules implementing that section by using any affiliate to provide information, services, products, or subsidies between a competitive affiliate and an electric utility or a transmission and distribution utility.

(3) Notice of conflict and/or petition for waiver. Nothing in this section is intended to affect or modify the obligation or duties relating to any rules or standards of conduct that may apply to a utility or the utility's affiliates under orders or regulations of the Federal Energy Regulatory Commission (FERC) or the Securities and Exchange Commission (SEC). A utility shall file with the commission a notice

of any provision in this section that conflict with FERC or SEC orders or regulations. A utility that is subject to statutes or regulations in any state that conflict with a provision of this section may petition the commission for a waiver of the conflicting provision on a showing of good cause.

(c) Definitions. The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) Arm's length transaction--The standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to related parties, a transaction is at arm's length if the transaction could have been made on the same terms to a disinterested third party in a bargained transaction.

(2) Competitive affiliate--An affiliate of a utility that provides services or sells products in a competitive energy-related market in this state, including telecommunications services, to the extent those services are energy-related.

(3) Confidential information--Any information not intended for public disclosure and considered to be confidential or proprietary by persons privy to such information. Confidential information includes but is not limited to information relating to the interconnection of customers to a utility's transmission or distribution systems, proprietary customer information, trade secrets, competitive information relating to internal manufacturing processes, and information about a utility's transmission or distribution system, operations, or plans for expansion.

(4) Corporate support services--Services shared by a utility, its parent holding company, or a separate affiliate created to perform corporate support services, with its affiliates of joint corporate oversight, governance, support systems, and personnel. Examples of services that may be shared, to the extent the services comply with the requirements prescribed by PURA §39.157(d) and (g) and rules implementing those requirements, include human resources, procurement, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development unrelated to marketing activity and/or business development for the competitive affiliate regarding its services and products, internal audit, community relations, corporate communications, financial services, financial planning and management support, corporate services, corporate secretary, lobbying, and corporate planning. Examples of services that may not be shared include engineering, purchasing of electric transmission facilities and service, transmission and distribution system operations, and marketing, unless such services are provided by a utility, or a separate affiliate created to perform such services, exclusively to affiliated regulated utilities and only for provision of regulated utility services.

(5) Proprietary customer information--Any information compiled by an electric utility on a customer in the normal course of providing electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

(6) Similarly situated--The standard for determining whether a non-affiliate is entitled to the same benefit a utility offers, or grants upon request, to its competitive affiliate for any product

or service. For purposes of this section, all non-affiliates serving or proposing to serve the same market as a utility's competitive affiliate are similarly situated to the utility's competitive affiliate.

(7) Transaction--Any interaction between a utility and its affiliate in which a service, good, asset, product, property, right, or other item is transferred or received by either a utility or its affiliate.

(8) Utility--An electric utility as defined in PURA §31.002(6) or a transmission and distribution utility as defined in PURA §31.002(19). For purposes of this section, a utility does not include a river authority operating a steam generating plant on or before January 1, 1999, or a corporation authorized by Chapter 245, Acts of the 67th Legislature, Regular Session, 1981 (Article 717 p, Vernon's Texas Civil Statutes). In addition, with respect to a holding company exempt under the Public Utility Holding Company Act (PUHCA) §3(a)(2), the term "utility," as used in this section, means the division or business unit through which the holding company conducts utility operations and not the holding company as a legal entity.

(d) Separation of a utility from its affiliates.

(1) Separate and independent entities. A utility shall be a separate, independent entity from any competitive affiliate.

(2) Sharing of employees, facilities, or other resources. Except as otherwise allowed in paragraph (3), (4), (5), or (7) of this subsection, a utility shall not share employees, facilities, or other resources with its competitive affiliates unless the utility can prove to the commission prior to such sharing that the sharing will not compromise the public interest. Such sharing may be allowed if the utility implements adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

(3) Sharing officers and directors, property, equipment, computer systems, information systems, and corporate services. A utility and a competitive affiliate may share common officers and directors, property, equipment, computer systems, information systems and corporate support services, if the utility implements safeguards that the commission determines are adequate to preclude employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

(4) Employee transfers and temporary assignments. A utility shall not assign, for less than one year, utility employees engaged in transmission or distribution system operations to a competitive affiliate unless the employee does not have knowledge of confidential information. Utility employees engaged in transmission or distribution system operations, including persons employed by a service company affiliated with the utility who are engaged in transmission system operations on a day-to-day basis or have knowledge of transmission or distribution system operations and are transferred to a competitive affiliate, shall not remove or otherwise provide or use confidential property or information gained from the utility or affiliated service company in a discriminatory or exclusive fashion, to the benefit of the competitive affiliate or to the detriment of non-affiliated electric suppliers. Movement of an employee engaged in transmission or distribution system operations, including a person employed by a service company affiliated with the utility who is engaged in transmission or distribution system operations on a day-to-day basis or has knowledge of transmission or distribution system operations from a utility to a competitive affiliate or vice versa,

may be accomplished through either the employee's termination of employment with one company and acceptance of employment with the other, or a transfer to another company, as long as the transfer of an employee from the utility to an affiliate results in the utility bearing no ongoing costs associated with that employee. Transferring employees shall sign a statement indicating that they are aware of and understand the restrictions and penalties set forth in this section. The utility also shall post a conspicuous notice of such a transfer on its Internet site or other public electronic bulletin board within 24 hours and for at least 30 consecutive calendar days. The exception to this provision is that employees may be temporarily assigned to an affiliate or non-affiliated utility to assist in restoring power in the event of a major service interruption or assist in resolving emergency situations affecting system reliability. Consistent with §25.84(h) of this title (relating to Reporting of Affiliate Transactions for Electric Utilities), however, within 30 days of such a deviation from the code of conduct, the utility shall report this information to the commission and shall conspicuously post the information on its Internet site or other public electronic bulletin board for 30 consecutive calendar days.

(5) Sharing of office space. A utility's office space shall be physically separate from that of its competitive affiliates, where physical separation is accomplished by having office space in separate buildings or, if within the same building, by a method such as having offices on separate floors or with separate access, unless otherwise approved by the commission.

(6) Separate books and records. A utility and its affiliates shall keep separate books of accounts and records, and the commission may review records relating to a transaction between a utility and an affiliate.

(A) In accordance with generally accepted accounting principles or state and federal guidelines, as appropriate, a utility shall record all transactions with its affiliates, whether they involve direct or indirect expenses.

(B) A utility shall prepare financial statements that are not consolidated with those of its affiliates.

(C) A utility and its affiliates shall maintain sufficient records to allow for an audit of the transactions between the utility and its affiliates. At any time, the commission may, at its discretion, require a utility to initiate, at the utility's expense, an audit of transactions between the utility and its affiliates performed by an independent third party.

(7) Limited credit support by a utility. A utility may share credit, investment, or financing arrangements with its competitive affiliates if it complies with subparagraphs (A) and (B) of this paragraph.

(A) The utility shall implement adequate safeguards precluding employees of a competitive affiliate from gaining access to information in a manner that would allow or provide a means to transfer confidential information from a utility to an affiliate, create an opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.

(B) The utility shall not allow an affiliate to obtain credit under any arrangement that would include a specific pledge of any assets in the rate base of the utility or a pledge of cash reasonably necessary for utility operations. This subsection does not affect a utility's obligations under other law or regulations, such as the obligations of a public utility holding company under §25.271(c)(2) of this title (relating to Foreign Utility Company Ownership by Exempt Holding Companies).

(e) Transactions between a utility and its affiliates.

(1) Transactions with all affiliates. A utility shall not subsidize the business activities of any affiliate with revenues from a regulated service. In accordance with PURA and the commission's rules, a utility and its affiliates shall fully allocate costs for any shared services, including corporate support services, offices, employees, property, equipment, computer systems, information systems, and any other shared assets, services, or products.

(A) Sale of products or services by a utility. Unless otherwise approved by the commission and except for corporate support services, any sale of a product or service by a utility shall be governed by a tariff approved by the commission. Products and services shall be made available to any third party entity on the same terms and conditions as the utility makes those products and services available to its affiliates.

(B) Purchase of products, services, or assets by a utility from its affiliate. Products, services, and assets shall be priced at levels that are fair and reasonable to the customers of the utility and that reflect the market value of the product, service, or asset.

(C) Transfers of assets. Except for asset transfers implementing unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued under PURA, Chapter 39, Subchapter G, assets transferred from a utility to its affiliates shall be priced at levels that are fair and reasonable to the customers of the utility and that reflect the market value of the assets or the utility's fully allocated cost to provide those assets.

(D) Transfer of assets implementing restructuring legislation. The transfer from a utility to an affiliate of assets implementing unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued under PURA, Chapter 39, Subchapter G will be reviewed by the commission pursuant to the applicable provisions of PURA, and any rules implementing those provisions.

(2) Transactions with competitive affiliates. Unless otherwise allowed in this subsection, transactions between a utility and its competitive affiliates shall be at arm's length. A utility shall maintain a contemporaneous written record of all transactions with its competitive affiliates, except those involving corporate support services and those transactions governed by tariffs. Such records, which shall include the date of the transaction, name of affiliate involved, name of a utility employee knowledgeable about the transaction, and a description of the transaction, shall be maintained by the utility for three years. In addition to the requirements specified in paragraph (1) of this subsection, the following provisions apply to transactions between utilities and their competitive affiliates.

(A) Provision of corporate support services. A utility may engage in transactions directly related to the provision of corporate support services with its competitive affiliates. Such provision of corporate support services shall not allow or provide a means for the transfer of confidential information from the utility to the competitive affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of the competitive affiliate.

(B) Purchase of products or services by a utility from its competitive affiliate. Except for corporate support services, a utility may not enter into a transaction to purchase a product or service from a competitive affiliate that has a per unit value of \$75,000 or more, or a total value of \$1 million or more, unless the transaction is the result of a fair, competitive bidding process formalized in a contract subject to the provisions of §25.273 of this title (relating to Contracts Between Electric Utilities and Their Competitive Affiliates).

(C) Transfers of assets. Except for asset transfers facilitating unbundling pursuant to PURA §39.051, asset valuation in accordance with PURA §39.262, and transfers of property pursuant to a financing order issued under PURA, Chapter 39, Subchapter G, any transfer from a utility to its competitive affiliates of assets with a per unit value of \$75,000 or more, or a total value of \$1 million or more, must be the result of a fair, competitive bidding process formalized in a contract subject to the provisions of §25.273 of this title.

(f) Safeguards relating to provision of products and services.

(1) Products and services available on a non-discriminatory basis. If a utility makes a product or service, other than corporate support services, available to a competitive affiliate, it shall make the same product or service available, contemporaneously and in the same manner, to all similarly situated entities, and it shall apply its tariffs, prices, terms, conditions, and discounts for those products and services in the same manner to all similarly situated entities. A utility shall process all requests for a product or service from competitive affiliates or similarly situated non-affiliated entities on a non-discriminatory basis. If a utility's tariff allows for discretion in its application, the utility shall apply that provision in the same manner to its competitive affiliates and similarly situated non-affiliates, as well as to their respective customers. If a utility's tariff allows no discretion in its application, the utility shall strictly apply the tariff. A utility shall not use customer-specific contracts to circumvent these requirements, nor create a product or service arrangement with its competitive affiliate that is so unique that no competitor could be similarly situated to utilize the product or service.

(2) Discounts, rebates, fee waivers, or alternative tariff terms and conditions. If a utility offers its competitive affiliate or grants a request from its competitive affiliate for a discount, rebate, fee waiver, or alternative tariff terms and conditions for any product or service, it must make the same benefit contemporaneously available, on a non-discriminatory basis, to all similarly situated non-affiliates. The utility shall post a conspicuous notice on its Internet site or public electronic bulletin board for at least 30 consecutive calendar days providing the following information: the name of the competitive affiliate involved in the transaction; the rate charged; the normal rate or tariff condition; the period for which the benefit applies; the quantities and the delivery points involved in the transaction (if any); any conditions or requirements applicable to the benefit; documentation of any cost differential underlying the benefit; and the procedures by which non-affiliates may obtain the same benefit. The utility shall maintain records of such information for a minimum of three years, and shall make such records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party. A utility shall not create any arrangement with its competitive affiliate that is so unique that no competitor could be similarly situated to benefit from the discount, rebate, fee waiver, or alternative tariff terms and conditions.

(3) Tying arrangements prohibited. Unless otherwise allowed by the commission through a rule or tariff prior to a utility's unbundling pursuant to PURA §39.051, a utility shall not condition the provision of any product, service, pricing benefit, or alternative terms or conditions upon the purchase of any other good or service from the utility or its competitive affiliate.

(g) Information safeguards.

(1) Proprietary customer information. A utility shall provide a customer with the customer's proprietary customer information, upon request by the customer. Unless a utility obtains prior affirmative written consent or other verifiable authorization from the customer as determined by the commission, or unless otherwise permitted under

this subsection, it shall not release any proprietary customer information to a competitive affiliate or any other entity, other than the customer, an independent organization as defined by PURA §39.151, or a provider of corporate support services for the sole purpose of providing corporate support services in accordance with subsection (e)(2)(A) of this section. The utility shall maintain records that include the date, time, and nature of information released when it releases customer proprietary information to another entity in accordance with this paragraph. The utility shall maintain records of such information for a minimum of three years, and shall make the records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party. When the third party requesting review of the records is not the customer, commission, or Office of Public Utility Counsel, the records may be redacted in such a way as to protect the customer's identity. If proprietary customer information is released to an independent organization or a provider of corporate support services, the independent organization or entity providing corporate support services is subject to the rules in this subsection with respect to releasing the information to other persons.

(A) Exception for law, regulation, or legal process. A utility may release proprietary customer information to another entity without customer authorization where authorized or requested to do so by the commission or where required to do so by law, regulation, or legal process.

(B) Exception for release to governmental entity. A utility may release proprietary customer information without customer authorization to a federal, state, or local governmental entity or in connection with a court or administrative proceeding involving the customer or the utility; provided, however, that the utility shall take all reasonable actions to protect the confidentiality of such information, including, but not limited to, providing such information under a confidentiality agreement or protective order, and shall also promptly notify the affected customer in writing that such information has been requested.

(C) Exception to facilitate transition to customer choice. In order to facilitate the transition to customer choice, a utility may release proprietary customer information to its affiliated retail electric provider or providers of last resort without authorization of those customers only during a period prescribed by the commission.

(D) Exception for release to providers of last resort. On or after January 1, 2002, a utility may provide proprietary customer information to a provider of last resort without customer authorization for the purpose of serving customers who have been switched to the provider of last resort.

(E) Exception for release to State of Texas' Division of Emergency Management. Beginning January 1, 2011, a utility may provide proprietary customer information to the State of Texas' Division of Emergency Management, upon that agency's request for purposes of identifying the customer as a critical care residential customer pursuant to §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers).

(2) Nondiscriminatory availability of aggregate customer information. A utility may aggregate non-proprietary customer information, including, but not limited to, information about a utility's energy purchases, sales, or operations or about a utility's energy-related goods or services. However, except in circumstances solely involving the provision of corporate support services in accordance with subsection (e)(2)(A) of this section, a utility shall aggregate non-proprietary customer information for a competitive affiliate only if the utility makes such aggregation service available to all non-affiliates under the

same terms and conditions and at the same price as it is made available to any of its affiliates. In addition, no later than 24 hours prior to a utility's provision to its competitive affiliate of aggregate customer information, the utility shall post a conspicuous notice on its Internet site or other public electronic bulletin board for at least 30 consecutive calendar days, providing the following information: the name of the competitive affiliate to which the information will be provided, the rate charged for the information, a meaningful description of the information provided, and the procedures by which non-affiliates may obtain the same information under the same terms and conditions. The utility shall maintain records of such information for a minimum of three years, and shall make such records available for third party review within 72 hours of a written request, or at a time mutually agreeable to the utility and the third party.

(3) No preferential access to transmission and distribution information. A utility shall not allow preferential access by its competitive affiliates to information about its transmission and distribution systems.

(4) Other limitations on information disclosure. Nothing in this rule is intended to alter the specific limitations on disclosure of confidential information in the Texas Utilities Code, the Texas Government Code, Chapter 552, or the commission's substantive and procedural rules.

(5) Other information. Except as otherwise allowed in this subsection, a utility shall not share information, except for information required to perform allowed corporate support services, with competitive affiliates unless the utility can prove to the commission that the sharing will not compromise the public interest prior to any such sharing. Information that is publicly available, or that is unrelated in any way to utility activities, may be shared.

(h) Safeguards relating to joint marketing and advertising.

(1) Joint marketing, advertising, and promotional activities.

(A) A utility shall not:

(i) provide or acquire leads on behalf of its competitive affiliates;

(ii) solicit business or acquire information on behalf of any of its competitive affiliates;

(iii) give the appearance of speaking or acting on behalf of any of its competitive affiliates;

(iv) share market analysis reports or other proprietary or non-publicly available reports, with its competitive affiliates;

(v) represent to customers or potential customers that it can offer competitive retail services bundled with its tariffed services; or

(vi) request authorization from its customers to pass on information exclusively to its competitive affiliate.

(B) A utility shall not engage in joint marketing, advertising, or promotional activities of its products or services with those of a competitive affiliate in a manner that favors the affiliate. Such joint marketing, advertising, or promotional activities include, but are not limited to, the following activities:

(i) acting or appearing to act on behalf of a competitive affiliate in any communications and contacts with any existing or potential customers;

(ii) joint sales calls;

(iii) joint proposals, either as requests for proposals or responses to requests for proposals;

(iv) joint promotional communications or correspondence, except that a utility may allow a competitive affiliate access to customer bill advertising inserts according to the terms of a commission-approved tariff so long as access to such inserts is made available on the same terms and conditions to non-affiliates offering similar services as the competitive affiliate that uses bill inserts;

(v) joint presentation at trade shows, conferences, or other marketing events within the State of Texas; and

(vi) providing links between any of a utility's websites and social media platforms, and any of the websites and social media platforms of its competitive affiliates.

(C) At a customer's unsolicited request, a utility may participate in meetings with a competitive affiliate to discuss technical or operational subjects regarding the utility's provision of transmission or distribution services to the customer, but only in the same manner and to the same extent the utility participates in such meetings with unaffiliated electric or energy services suppliers and their customers. The utility shall not listen to, view, or otherwise participate in any way in a sales discussion between a customer and a competitive affiliate or an unaffiliated electric or energy services supplier.

(2) Requests for specific competitive affiliate information. If a customer or potential customer makes an unsolicited request to a utility for information specifically about any of its competitive affiliates, the utility may refer the customer or potential customer to the competitive affiliate for more information. Under this paragraph, the only information that a utility may provide to the customer or potential customer is the competitive affiliate's address and telephone number. The utility shall not transfer the customer directly to the competitive affiliate's customer service office via telephone or provide any other electronic link whereby the customer could contact the competitive affiliate through the utility. When providing the customer or potential customer information about the competitive affiliate, the utility shall not promote its competitive affiliate's products or services, nor shall it offer the customer or potential customer any opinion regarding the service of the competitive affiliate or any other service provider.

(3) Requests for general information about products or services offered by competitive affiliates and their competitors. If a customer or potential customer request general information from a utility about products or services provided by its competitive affiliate or its affiliate's competitors, the utility shall not promote its competitive affiliate or its affiliate's products or services, nor shall the utility offer the customer or potential customer any opinion regarding the service of the competitive affiliate or any other service provider. The utility may direct the customer or potential customer to a telephone directory or to the commission, or provide the customer with a recent list of suppliers developed and maintained by the commission, but the utility may not refer the customer or potential customer to the competitive affiliate except as provided for in paragraph (2) of this subsection.

(i) Remedies and enforcement.

(1) Internal codes of conduct for the transition period. During the transition to competition, including the period prior to and during utility unbundling pursuant to PURA §39.051, each utility shall implement an internal code of conduct consistent with the spirit and intent of PURA §39.157(d) and with the provisions of this section. Such internal codes of conduct are subject to commission review and approval in the context of a utility's unbundling plan submitted pursuant to PURA §39.051(e); however, such internal codes of conduct shall take effect, on an interim basis, on January 10, 2000. The internal codes of con-

duct shall be developed in good faith by the utility based on the extent to which its affiliate relationships are known by January 10, 2000, and then updated as necessary to ensure compliance with PURA and commission rules. A utility exempt from PURA Chapter 39 pursuant to PURA §39.102(c) shall adopt an internal code of conduct that is consistent with its continued provision of bundled utility service during the period of its exemption.

(2) Ensuring compliance for new affiliates. A utility and a new affiliate are bound by the code of conduct immediately upon creation of the new affiliate. Upon the creation of a new affiliate, the utility shall immediately post a conspicuous notice of the new affiliate on its Internet site or other public electronic bulletin board for at least 30 consecutive calendar days. Within 30 days of creation of the new affiliate, the utility shall file an update to its internal code of conduct and compliance plan, including all changes due to the addition of the new affiliate. The utility shall ensure that any interaction with the new affiliate is in compliance with this section.

(3) Compliance Audits. No later than one year after the utility has unbundled pursuant to PURA §39.051, or acquires a competitive affiliate, and, at a minimum, every third year thereafter, the utility shall have an audit prepared by independent auditors that verifies that the utility is in compliance with this section. For a utility that has no competitive affiliates, the audit may consist solely of an affidavit stating that the utility has no competitive affiliates. The utility shall file the results of each said audit with the commission within one month of the audit's completion. The cost of the audits shall not be charged to utility ratepayers.

(4) Informal complaint procedure. A utility shall establish and file with the commission a complaint procedure for addressing alleged violations of this section. This procedure shall contain a mechanism whereby all complaints shall be placed in writing and shall be referred to a designated officer of the utility. All complaints shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim. The designated officer shall acknowledge receipt of the complaint in writing within five working days of receipt. The designated officer shall provide a written report communicating the results of the preliminary investigation to the complainant within thirty days after receipt of the complaint, including a description of any course of action that will be taken. In the event the utility and the complainant are unable to resolve the complaint, the complainant may file a formal complaint with the commission. The utility shall notify the complainant of his or her right to file a formal complaint with the commission, and shall provide the complainant with the commission's address and telephone number. The utility and the complainant shall make a good faith effort to resolve the complaint on an informal basis as promptly as practicable. The informal complaint process shall not be a prerequisite for filing a formal complaint with the commission, and the commission may, at any time, institute a complaint against a utility on its own motion.

(5) Enforcement by the commission. A violation or series or set of violations of this section that materially impairs, or is reasonably likely to materially impair, the ability of a person to compete in a competitive market shall be deemed an abuse of market power.

(A) In addition to other methods that may be available, the commission may enforce the provisions of this rule by:

- (i) seeking an injunction or civil penalties to eliminate or remedy the violation or series or set of violations;
- (ii) suspending, revoking, or amending a certificate or registration as authorized by PURA §39.356; or

(iii) pursuing administrative penalties under PURA, Chapter 15, Subchapter B.

(B) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the violation or series or set of violations.

(C) In assessing penalties, the commission shall consider the following factors:

- (i) the utility's prior history of violations;
- (ii) the utility's efforts to comply with the commission's rules, including the extent to which the utility has adequately and physically separated its office, communications, accounting systems, information systems, lines of authority, and operations from its affiliates, and efforts to enforce these rules;
- (iii) the nature and degree of economic benefit gained by the utility's competitive affiliate;
- (iv) the damages or potential damages resulting from the violation or series or set of violations;
- (v) the size of the business of the competitive affiliate involved;
- (vi) the penalty's likely deterrence of future violations; and
- (vii) such other factors deemed appropriate and material to the particular circumstances of the violation or series or set of violations.

(6) No immunity from antitrust enforcement. Nothing in these affiliate rules shall confer immunity from state or federal antitrust laws. Sanctions imposed by the commission for violations of this rule do not affect or preempt antitrust liability, but rather are in addition to any antitrust liability that may apply to the anti-competitive activity. Therefore, antitrust remedies also may be sought in federal or state court to cure anti-competitive activities.

(7) No immunity from civil relief. Nothing in these affiliate rules shall preclude any form of civil relief that may be available under federal or state law, including, but not limited to, filing a complaint with the commission consistent with this subsection.

(8) Preemption. This rule supersedes any procedures or protocols adopted by an independent organization as defined by PURA §39.151, or similar entity, that conflict with the provisions of this rule.

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 June 6, 2014.

TRD-201402644

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: June 26, 2014

Proposal publication date: January 3, 2014

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

◆ ◆ ◆  
**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

CHAPTER 61. SCHOOL DISTRICTS  
SUBCHAPTER BB. COMMISSIONER'S  
RULES ON REPORTING REQUIREMENTS

19 TAC §61.1023

The Texas Education Agency (TEA) adopts new §61.1023, concerning reporting requirements. The new section is adopted with changes to the proposed text as published in the April 4, 2014, issue of the *Texas Register* (39 TexReg 2402). The adopted new section establishes procedures for each school district to report performance ratings that the district has assigned to itself and to each of its campuses for the new community and student engagement indicators.

House Bill 5, Section 46, 83rd Texas Legislature, Regular Session, 2013, added the Texas Education Code, §39.0545, which requires each school district to assign performance ratings to the district and each campus for community and student engagement indicators. The ratings are to be reported to the TEA.

Adopted new 19 TAC §61.1023 provides instructions for reporting these ratings and the record of compliance with statutory reporting and policy to the TEA.

In response to public comment, the following changes were made at adoption.

Subsections (b) and (d) have been modified to clarify that the local committee(s) determine the criteria that the district uses to evaluate and assign a rating of *Exemplary*, *Recognized*, *Acceptable*, and *Unacceptable*.

Subsection (c) has been modified to clarify that the district determines whether a program or performance category is not applicable.

Subsection (e) has been modified to clarify that local committee(s) determine the criteria that the district uses to evaluate and assign a status regarding compliance with statutory reporting and policy requirements.

Subsection (f) has been modified to include facilities operated by the Texas Juvenile Justice Department.

Subsection (h) has been modified to allow districts to post the locally determined performance ratings and compliance status for campuses that operate on a year-round calendar on the school district website no later than the last day of August of each year.

The adopted new section has new reporting implications beyond those already in place. School districts are required to report their locally assigned performance ratings through the Public Education Information Management System (PEIMS) and the Texas Education Data Standards.

The adopted new section requires a local committee(s) to develop the locally determined criteria that are used to determine the performance rating and compliance status for the district and each campus. Therefore, each district needs to locally maintain the documents that are developed to determine the performance rating and compliance status for the district and each campus.

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 April 4, 2014, and ended May 5, 2014. Following is a summary of the pub-

lic comments received and corresponding agency responses regarding the proposed new 19 TAC Chapter 61, School Districts, Subchapter BB, Commissioner's Rules on Reporting Requirements, §61.1023, Community and Student Engagement.

Comment: Austin Independent School District (ISD) commented that the use of the "00" (not applicable) code for campus overall performance will create a fatal error in the Public Education Information Management System (PEIMS) submission for the alternative and Pre-Kindergarten campuses that the district plans to exempt.

Agency Response: The agency disagrees. The rule requires districts to assign locally determined performance ratings to the district and all campuses in the district, except for budgeted campuses, Disciplinary Alternative Education Program (DAEP) campuses, and Juvenile Justice Alternative Education Program (JJAEP) campuses. Districts must assign locally determined performance ratings to alternative and Pre-Kindergarten campuses.

In response to other public comments received, subsection (f) was updated to specify that districts are not required to assign locally determined performance ratings and compliance status to facilities operated by the Texas Juvenile Justice Department (TJJD).

Comment: Austin ISD commented that year-round campuses will be unable to meet the August 8, 2014, deadline because the PEIMS Submission 3 deadline for these campuses is August 15, 2014.

Agency Response: The agency agrees and will allow year-round education campuses to submit their locally determined performance ratings and compliance status on the PEIMS submission timeline applicable to year-round campuses. Subsection (h) was modified to allow districts to post the locally determined performance ratings and compliance status for these campuses on the school district website no later than the last day of August of each year.

Comment: Austin ISD commented that it is not clear whether the "0" value of the "C088" for the Statutory Reporting and Policy Compliance Code signifies "Not in Compliance" or "Not Applicable." The district requested removal of the "0" value from the Mandatory Fields, so districts may leave the field blank if the code is not applicable.

Agency Response: The agency disagrees. The Statutory Reporting and Policy Compliance Code values of either "0" or "1" must be assigned to each district and campus in order to meet statutory requirements. The "0" value signifies the district or campus was not in compliance. The "0" value may not be used to signify "Not Applicable." Agency staff will develop new values for the Statutory Reporting and Policy Compliance Code to ensure that the values are more clearly defined in future years.

Comment: Conroe ISD commented that districts should not be required to use a "yes or no" methodology for determining local performance ratings as proposed in §61.1023(e) since some districts have already created their own methodology.

Agency Response: The agency disagrees. To meet statutory requirements, the Statutory Reporting and Policy Compliance Codes of either "0" or "1" must be assigned to each district and campus.

Comment: Conroe ISD commented that the community and student engagement ratings are not applicable to Juvenile

Detention Centers (JDC). Therefore, the district requested to not assign performance ratings to JDCs as defined in proposed §61.1023(b)-(e).

Agency Response: The agency agrees and has modified subsection (f) to specify that districts are not required to assign locally-determined performance ratings and compliance status to facilities operated by the TJJD.

Comment: Conroe ISD commented that the requirement for districts to post locally determined performance ratings and compliance statuses for each district and campus on the school district's website no later than August 8 goes beyond the scope and intent of the law. The district also stated that districts are required to repost these ratings once in August and again with the same information with TEA's accountability reports.

Agency Response: The agency disagrees. Statute requires districts to publicly release the locally determined performance ratings and compliance status for the district and each campus no later than August 8 of each year. Statute does not require districts to post their locally determined performance ratings and compliance status at a different time later in the school year. Statute does require the TEA to post this information for all school districts and campuses on the TEA website no later than October 1.

In response to other public comments received, subsection (h) was updated to allow districts to post the locally determined performance ratings and compliance status for campuses that operate on a year-round calendar on the school district website no later than the last day of August of each year.

Comment: Conroe ISD commented that the requirement for districts to assign an overall rating to the district and each campus is not in statute. The district also stated that this requirement will require districts that have already established locally determined criteria to create new criteria.

Agency Response: The agency disagrees. TEC, §39.0545(a), states, in part, "Each school district shall evaluate the district's performance and the performance of each campus in the district in community and student engagement and in compliance as provided by this section and assign the district and each campus a performance rating of exemplary, recognized, acceptable, or unacceptable for both overall performance and each individual evaluation factor listed under Subsection (b)."

Comment: Sinton ISD commented it has a TJJD campus that is a residential facility and a maximum security pre-adjudication jail that serves several counties. The district commented that the community and student engagement indicators are not applicable to facilities operated by the TJJD.

Agency Response: The agency agrees and has modified subsection (f) to specify that districts are not required to assign locally determined performance ratings and compliance status to facilities operated by the TJJD.

Comment: Region 10 Education Service Center commented that the areas of compliance that districts must report are unclear.

Agency Response: The agency acknowledges that statute does not provide specific guidance concerning criteria for determining compliance statuses. However, statute does not give the agency authority to provide policy guidance to districts regarding the criteria for determining the community and student engagement performance ratings and compliance statuses.

Comment: Pasadena ISD commented that the alignment of submission deadlines is problematic and hinders inclusion of summative data. The district recommended that districts be allowed to report community and student engagement ratings through the Interventions Stage and Activity Manager (ISAM) or Texas Education Agency Secure Environment (TEASE) Accountability applications.

Agency Response: The agency disagrees that an alternative data collection system should be developed by the TEA in lieu of the summer 2014 (Collection 3) PEIMS submission. Districts are required to send complete and accurate data, free of fatal errors, by the first submission deadline for each data collection as specified in the PEIMS Submission and Resubmission Timelines. Districts may choose to submit locally determined performance ratings and compliance status in the first submission that can be updated with a resubmission file in cases where the final outcomes or quality control checks have not been completed prior to the initial submission deadline.

Comment: KIPP Dallas-Fort Worth Charter School requested a more detailed description of the programs or specific categories of performance for campuses.

Agency Response: The agency provides the following clarification. Statute does not give the agency authority to provide policy guidance to districts regarding the criteria for determining the community and student engagement performance ratings and compliance statuses.

Comment: Houston ISD commented that the way the law is written and implemented will create meaningless information to share with the community. The district commented that without guidance on the determination of ratings and without definitions of the eight program categories, districts and campuses will likely receive inflated ratings that will not allow for meaningful statewide comparisons. The district commented that it appreciates the flexibility of local determination, but is concerned about inconsistencies that will occur in the first year of reporting for these reasons. The district commented that this is an unfunded legislative mandate that has cost additional time and financial resources to implement. The district also commented that the rule proposed by the commissioner is consistent with the law.

Agency Response: The agency acknowledges that the criteria developed by local committees will differ across school districts and will not necessarily allow for comparisons of performance ratings and compliance statuses.

Comment: The Texas School Alliance (TSA) commented that the proposed rule is inconsistent and burdensome to implement. The TSA also commented that the requirements are especially burdensome for large districts to convene local committees to assign nine ratings per campus and to develop criteria for these ratings for which districts have no resources to implement. The TSA requested that the rule limit responsibility of the local committees to develop the criteria for the local evaluation and allow districts to implement the evaluation system and assign ratings.

Agency Response: The agency agrees on the responsibility of the local committee(s) and has modified subsections (b), (d), and (e) to specify that the local committee(s) develop the criteria for the locally determined ratings and that districts evaluate and assign the ratings and compliance status for the district and each campus.

Comment: The TSA requested allowing the data submission editor to treat associated fields as "special warning fields" rather



than as "fatal errors" for the initial 2013-2014 data submission. The TSA commented that this will give districts time to assign final ratings by the resubmission deadline, which is considerably closer to the statutory deadline.

Agency Response: The agency disagrees that "fatal errors" edits should be replaced with "special warning fields" for the initial 2013-2014 data submission. Districts are required to send complete and accurate data, free of fatal errors, by the first submission deadline for each data collection as specified in the PEIMS Submission and Resubmission Timelines. Districts may choose to submit locally determined performance ratings and compliance status in the first submission that can be updated with a resubmission file in cases where the final outcomes or quality control checks have not been completed prior to the initial submission deadline.

Comment: The Texas Association of School Administrators (TASA) and the Texas Association of School Boards (TASB) requested revising the commissioner's rule to reflect statute. The TASA and TASB commented that the only statutorily required task of the local committee is the development of criteria. The TASA and TASB also commented that the statute clearly states that school districts must use criteria developed by the local committee to evaluate the performance of the district and the district's campuses.

Agency Response: The agency agrees on the responsibility of the local committee(s) and has modified subsections (b)-(e) to specify that the local committee(s) develop the criteria for the locally determined ratings and that districts evaluate and assign the ratings and compliance status for the district and each campus.

Comment: KIPP San Antonio Charter School commented that a more acceptable approach to developing the ratings under community and student engagement would be to "direct districts and CMOs to devise their own self-assessment and reporting systems following a set of statewide guidelines (rather than trying to implement an unproven, centrally managed, one-size-fits-all apparatus created and implemented entirely by TEA).

Agency Response: The agency disagrees. Statute does not give the agency authority to provide policy guidance to districts regarding the criteria for determining the community and student engagement performance ratings and compliance statuses.

The new section is adopted under the Texas Education Code (TEC), §39.0545, as added by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt rules regarding school district evaluation of performance in community and student engagement and of compliance with statutory reporting and policy requirements.

The new section implements the TEC, §39.0545, as added by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

§61.1023. *Community and Student Engagement.*

(a) In accordance with the Texas Education Code (TEC), §39.0545(a), each school district shall assign performance ratings to the district and each campus for community and student engagement indicators based on locally determined criteria.

(b) Each school district shall designate a local committee(s) to determine criteria that districts shall use to evaluate and assign a rating of *Exemplary*, *Recognized*, *Acceptable*, or *Unacceptable* for the following programs or specific categories of performance for the district and each campus:

- (1) fine arts;
- (2) wellness and physical education;
- (3) community and parental involvement;
- (4) the 21st Century Workforce Development program;
- (5) the second language acquisition program;
- (6) the digital learning environment;
- (7) dropout prevention strategies; and
- (8) educational programs for gifted and talented students.

(c) A school district may only assign a rating of *Not Applicable* to a program or performance category in subsection (b) of this section when the district determines that the program or performance category is not applicable to the district or a campus. A district may not assign a rating of *Not Applicable* to all of the program or performance categories in subsection (b) of this section for the district or a campus.

(d) Each school district shall require the local committee(s) to determine the criteria that districts shall use to evaluate and assign an overall performance rating of *Exemplary*, *Recognized*, *Acceptable*, or *Unacceptable* to each campus and the district. A district may not assign a rating of *Not Applicable* to this indicator for the district or a campus.

(e) Each school district shall require the local committee(s) to determine the criteria that districts shall use to evaluate and assign a status of "Yes" or "No" on the record of the district and each campus regarding compliance with statutory reporting and policy requirements under the TEC, §39.0545. A district may not assign a rating of *Not Applicable* to this indicator for the district or a campus.

(f) Each school district shall assign performance ratings for the community and student engagement indicators and compliance status as defined in subsections (b)-(e) of this section to the district and all campuses in the district, except for budgeted campuses, Disciplinary Alternative Education Program campuses, and Juvenile Justice Alternative Education Program campuses. Districts are not required to assign performance ratings for the community and student engagement indicators and compliance status to facilities operated by the Texas Juvenile Justice Department.

(g) Each school district shall report the locally determined performance ratings and compliance status to the Texas Education Agency (TEA) in accordance with the reporting requirements and timelines specified in the Public Education Information Management System (PEIMS) Data Standards and the Texas Education Data Standards applicable for that school year.

(h) Each school district shall post the locally determined performance ratings and compliance status for the district and each campus on the school district website no later than August 8 of each year. Districts shall post the locally determined performance ratings and compliance status for campuses that operate on a year-round calendar on the school district website no later than the last day of August of each year.

(i) The TEA shall report the performance ratings and compliance status for community and student engagement indicators reported by school districts on the TEA website no later than October 1.

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 June 5, 2014.

TRD-201402639



CHAPTER 101. ASSESSMENT  
SUBCHAPTER CC. COMMISSIONER'S  
RULES CONCERNING IMPLEMENTATION OF  
THE ACADEMIC CONTENT AREAS TESTING  
PROGRAM  
DIVISION 4. PERFORMANCE STANDARDS  
19 TAC §101.3041

The Texas Education Agency (TEA) adopts an amendment to §101.3041, concerning student assessment. The amendment is adopted without changes to the proposed text as published in the April 4, 2014, issue of the *Texas Register* (39 TexReg 2403) and will not be republished. The section addresses performance standards for the State of Texas Assessments of Academic Readiness (STAAR®). The adopted amendment establishes the performance standards for the new English I and English II combined reading and writing assessments. The adopted amendment also maintains the phase-in 1 performance standard for the STAAR® program for the 2013-2014 school year.

The 83rd Texas Legislature's passage of House Bill (HB) 5 mandates that, beginning in spring 2014, the STAAR® and STAAR® Modified English I and English II reading and writing assessments may no longer be administered as separate assessments. To reflect the intent of this legislation, the English I and II assessments have been redesigned to combine reading and writing into a single measure with a single test score. Each redesigned English assessment will also be administered on a single day.

Consistent with previous STAAR® standard setting, the following cut scores are adopted for each of the redesigned English assessments:

**Level III: Advanced Academic Performance.** Performance in this category indicates that students are well prepared for the next grade or course. They demonstrate the ability to think critically and apply the assessed knowledge and skills in varied contexts, both familiar and unfamiliar. Students in this category have a high likelihood of success in the next grade or course with little or no academic intervention.

**Level II: Satisfactory Academic Performance.** Performance in this category indicates that students are sufficiently prepared for the next grade or course. They generally demonstrate the ability to think critically and apply the assessed knowledge and skills in familiar contexts. Though these students have a reasonable likelihood of success in the next grade or course, they may need short-term, targeted academic intervention.

Students not achieving Level II performance are considered to be at Level I: Unsatisfactory Academic Performance. Performance in this category indicates that students are inadequately prepared for the next grade or course. They do not demonstrate a sufficient understanding of the assessed knowledge and skills. Students in this category are unlikely to succeed in the

next grade or course without significant, ongoing academic intervention.

For both the STAAR® and STAAR® Modified English I and English II assessments, phase-in 1, phase-in 2, and final recommended cut scores have been determined for Level II performance. The Level III performance will not be phased in. Phase-in 1, phase-in 2, and final recommended cut scores will be reported in the 2014 statewide test reports.

The adopted amendment to 19 TAC §101.3041 revises subsection (a) to specify that the phase-in 1 performance standard will remain in effect for the 2013-2014 school year for all applicable assessments.

Performance standards for the Grades 3-8 general, modified, and alternate STAAR® assessments are also addressed in new subsection (b), including corresponding revised figures.

Performance standards for end-of-course (EOC) general, modified, and alternate assessments are addressed in subsection (c), including corresponding revised figures. The figures in subsection (c)(1) and (2) show the revised English I and English II cut scores for the STAAR® and STAAR® Modified assessments, respectively. The revised figures in subsection (c)(1) and (2) also reflect the repeal of the STAAR® Algebra II, chemistry, English III, geometry, physics, world geography, and world history EOC assessments by HB 5. Subsection (c) maintains the requirement that the performance standard in place when a student first takes an EOC assessment be maintained throughout the student's high school career and clarifies that this requirement applies to all five EOC assessments.

In addition, pursuant to Senate Bill (SB) 906, 83rd Texas Legislature, Regular Session, 2013, the adopted amendment to 19 TAC §101.3041 addresses the performance standards for the STAAR® Alternate assessments. SB 906 prohibits the agency from "adopting a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's admission, review, and dismissal committee." To comply with this requirement, the revised figures in subsections (b)(3) and (c)(3) specify that the phase-in standard used for the STAAR® Alternate program in the 2011-2012 school year be applied to the 2013-2014 school year results. This standard shall be in place for one year only since HB 5 also requires the redevelopment of the alternate assessments used for the most severely cognitively disabled students so that they do not require teachers to prepare tasks or materials. The new alternate assessments will be administered for the first time in the spring of the 2014-2015 school year.

The Grade 10 Texas Assessment of Knowledge and Skills performance standards are removed from the revised figure in subsection (d) since that assessment is no longer administered.

The adopted amendment has no procedural and reporting implications beyond those that apply to all Texas students. The adopted amendment has minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students.

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 April 4, 2014, and ended May 5, 2014. Following is a summary of the public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 4, Performance Standards, §101.3041, Performance Standards.

Comment: An educator from Carthage Independent School District (ISD) and the Texas School Alliance (TSA) agreed with maintaining the phase-in 1 performance standard for the 2013-2014 school year to allow students additional time to adjust to the STAAR® assessments. An educator from Houston ISD supported the rule as written. The TSA also agreed with restoring the STAAR® Alternate performance standard to those applied in the 2011-2012 school year and with the requirement that the performance standard in place when a student first takes an EOC assessment be maintained throughout the student's high school career for all five EOC assessments.

Agency Response: The agency concurs.

Comment: The TSA noted that a timeline for the remaining phase-in standards is not given, which means that educators must guess when, and by how much, improvement is needed during the next school year. Additionally, the TSA requested clarification whether the phase-in standards for the STAAR® English I and English II assessments may be extended another year since the assessments are new and the phase-in cut score increases needed to go from phase-in 1 to phase-in 2 are greater than the increases from the phase-in 2 to the final recommended standards.

Agency Response: After reviewing the 2014 spring end-of-course assessments results, and in accordance with the TEC, §39.0241(a), the commissioner of education will determine whether the phase-in 1 or phase-in 2 standard will be applicable for the 2014-2015 school year.

The agency does note that though the STAAR® English I and English II assessments have been redesigned to be administered in a single day, the new assessments were designed to assess the same content standards as the previous tests. In addition, differences in scale score values between phase-in levels is not a measure of relative difficulty in achieving the next performance standard.

The amendment is adopted under the Texas Education Code, §39.023(c), which authorizes the agency to adopt end-of-course assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history, and §39.0241(a), which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments.

The amendment implements the Texas Education Code, §39.023(c) and §39.0241(a).

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 June 2, 2014.

TRD-201402605

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: June 22, 2014

Proposal publication date: April 4, 2014

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

◆ ◆ ◆  
**TITLE 22. EXAMINING BOARDS**

**PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING**

**CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES**

**SUBCHAPTER C. DEFINITIONS OF TERMS**

**22 TAC §661.31**

The Texas Board of Professional Land Surveying (Board) adopts amendments to §661.31, concerning Definitions, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1052).

Amendments to §661.31 clarify the definition of "firm" and "offer of surveying services" to promote uniformity of application and interpretation of defined terms.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Occupations Code §§1071.002, 1071.055, 1071.101, 1071.102, 1071.151, 1071.152, and 1071.153 and Government Code §2001.004.

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 June 9, 2014.

TRD-201402680

Marcelino (Tony) Estrada

Executive Director

Texas Board of Professional Land Surveying

Effective date: June 29, 2014

Proposal publication date: February 21, 2014

For further information, please call: (512) 239-5263

◆ ◆ ◆  
**SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING**

**22 TAC §661.45, §661.52**

The Texas Board of Professional Land Surveying (Board) adopts amendments to §661.45, concerning Examinations, and §661.52, concerning Inactive Status, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1053).

Amendments to §661.45(c) allow the Board to treat the state exam for registered professional land surveyors as one complete exam rather than a compilation of parts.

Amendments to §661.52 clarify the procedure for an applicant seeking inactive status by allowing the Executive Director to use his discretion in approving the applicant's request or bringing the matter to the Board's attention.

One comment was received concerning §661.45(c), suggesting that the amendment would invalidate the rigor exam, as it was initially divided into separate sections due to the uniqueness of the Texas land system. However, the idea that the exam's structure is correlated to the Texas land system is incorrect. The Board is in favor of consolidating the Legal and Analytical Exams into one exam, as is done in other states, and feels that the consolidation will not affect the ability of the exam to test applicants on their familiarity and competency in relation to the Texas land system.

The amendments are adopted under Texas Occupations Code §§1071.002, 1071.055, 1071.101, 1071.102, 1071.151, 1071.152, and 1071.153 and Government Code §2001.004.

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 June 9, 2014.

TRD-201402681

Marcelino (Tony) Estrada

Executive Director

Texas Board of Professional Land Surveying

Effective date: June 29, 2014

Proposal publication date: February 21, 2014

For further information, please call: (512) 239-5263



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 1. GENERAL LAND OFFICE

#### CHAPTER 13. LAND RESOURCES

##### SUBCHAPTER F. VACANCY PROCESS

###### 31 TAC §§13.71 - 13.83

The Texas General Land Office (GLO) adopts the repeal of Chapter 13, Subchapter F, §§13.71 - 13.83, relating to Vacancy Process, without changes to the proposal as published in the December 20, 2013, issue of the *Texas Register* (38 TexReg 9206).

Currently Chapter 13 contains Subchapters E and F, which both pertain to processing applications to purchase or lease vacant land, as provided for in the Texas Natural Resources Code. Subchapter F pertains to vacancy applications filed on or after June 17, 2005, and was left active pending completion of outstanding vacancy applications subject to said rules. Since all applications subject to the rules have been processed and there are no outstanding applications applicable to Subchapter F, the rules are being repealed.

The GLO did not receive any comments on the proposal.

The repeal was adopted under Texas Natural Resources Code §§31.051, 51.174, and 52.324, which provide the GLO with the authority to make rules as necessary and convenient to administer the Sale and Lease of Vacancies, Texas Natural Resource Code, Title 2, Chapter 51, Subchapter E, §§51.171 - 51.195.

The repeal is adopted under the authority of Texas Natural Resources Code §51.174(c) (Vernon Supp. 2005), which authorizes the commissioner to adopt rules necessary and convenient to administer the vacancy subchapter.

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 June 5, 2014.

TRD-201402636

Larry Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Effective date: June 25, 2014

Proposal publication date: December 20, 2013

For further information, please call: (512) 475-1859



## PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

### CHAPTER 57. FISHERIES

#### SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

##### DIVISION 4. SPECIAL PROVISIONS TO PREVENT THE SPREAD OF EXOTIC AQUATIC SPECIES

###### 31 TAC §57.1001

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 22, 2014, adopted an amendment to §57.1001, concerning Draining of Water from Vessels Leaving or Approaching Public Fresh Water, with changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3030).

The amendment removes a reference to "a public water body in a county listed in paragraph (3)" in paragraph (1) and replaces it with a reference to reflect the fact that the rule as adopted applies to all public fresh water in the state. Since §57.1001(3), as proposed and adopted, applies to all public fresh water in the state, it is no longer necessary to retain language applicable to water bodies in specific counties. The change is nonsubstantive.

Current §57.1001 requires persons approaching or leaving public fresh water in 47 counties to drain all bilges, live wells, and other similar receptacles and systems holding or capable of holding water, with certain listed exceptions. The amendment as adopted extends the applicability of the current rule to all public fresh water in the state.

The rule is intended to slow or prevent the spread of the zebra mussel (*Dreissena polymorpha*), an invasive exotic species that has become a major nuisance in North America. Invasive exotic species are non-indigenous species that have been accidentally or intentionally released into an ecosystem. In the worst cases, invasive species, because they are not checked by natural competition or predators, compete directly with, prey upon, or hybridize with native species, alter habitats and food webs,

threaten rare species, and generally wreak ecological havoc. Besides the obvious negative impacts to aquatic ecosystems, invasive exotic species also threaten agriculture, ranching, forestry, and industry.

The zebra mussel is a small, non-native mussel originally found in Eurasia. It has spread throughout Europe, where it is considered to be a major environmental and industrial menace. The animal appeared in North America in the late 1980s, and within ten years had colonized in all five Great Lakes and the Mississippi, Tennessee, Hudson, and Ohio river basins. Since then, they have spread to additional lakes and river systems. Once zebra mussels become established in a water body, they are impossible to eradicate with the technology available today.

Zebra mussels were first detected in Texas in 2009, when the department confirmed their presence in Lake Texoma. In 2012, the department utilized its authority to regulate the possession of exotic aquatic species and promulgated rules intended to prevent zebra mussels from spreading. The rule at that time affected only a section of the Red River including Lake Texoma and Lake Lavon. Later in 2012, parts of the Elm Fork of the Trinity River, including Lakes Ray Roberts and Lewisville, were added. In June 2013, zebra mussels were confirmed in Lake Bridgeport, a reservoir in Wise and Jack counties. The department responded by adding additional segments of the West Fork of the Trinity River, which included Lakes Eagle Mountain and Worth in addition to Bridgeport to the effectiveness of the rule. In September 2013, the department confirmed the presence of zebra mussels on Lake Belton in Bell and Coryell counties and added lakes Belton and Stillhouse Hollow (and the Leon and Lampasas rivers above those lakes) to the applicability of the rule.

Meanwhile, the 83rd Texas Legislature (Regular Session, 2013) enacted House Bill (HB) 1241, authorizing the Texas Parks and Wildlife Commission to adopt rules requiring a person leaving or approaching public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with public water. In a rulemaking adopted in November 2013 and published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8912), the department replaced the previous rule that affected specific segments of river systems with a new approach that implemented water-draining requirements on all public water bodies within 17 counties (Collin, Cooke, Dallas, Denton, Fannin, Grayson, Hood, Jack, Kaufman, Montague, Palo Pinto, Parker, Rockwall, Stephens, Tarrant, Wise, and Young).

Following the confirmation of zebra mussels in Lake Belton, the department determined that a more proactive application of the regulation was necessary because the Interstate Highway 35 corridor, which traverses the basins of the Trinity, Brazos, Colorado, and Guadalupe rivers, facilitates relatively easy movement of vessels by large numbers of boaters and anglers and is therefore the most likely avenue by which zebra mussels would be spread from the basins where they are already known to exist. Therefore, in a rulemaking adopted earlier this year and published in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1933), the department added 30 more counties along the IH 35 corridor to the applicability of the current rule (Archer, Bastrop, Bell, Bosque, Burnet, Clay, Comal, Comanche, Coryell, Eastland, Ellis, Erath, Falls, Fayette, Freestone, Hamilton, Hays, Henderson (west of State Highway 19), Hill, Johnson, Leon, Limestone, Llano, McLennan, Navarro, Robertson, Somervell, Travis, Wichita, and Williamson).

At the January 27, 2014, meeting of the Parks and Wildlife Commission, the commission noted that given the rapid movement of zebra mussels from the Oklahoma border to central Texas within a three-year period, the current "detect-and-respond" strategy should be replaced with a statewide rule that requires vessels approaching or leaving public fresh water (and receptacles aboard those vessels) to be drained. Therefore, amendments to §57.1001 were proposed in April and adopted in May to extend the applicability of the rule to all public fresh water in Texas while retaining the exceptions currently in effect. Under the provisions of Parks and Wildlife Code, §66.0073, the department cannot require the draining of water from vessels approaching or leaving salt water.

The rule will function by requiring persons to drain vessels and receptacles before approaching or leaving fresh water, which is intended to deter the spread of zebra mussels as well as other exotic aquatic species.

The department received 16 comments opposing adoption of the proposed rule. Of the 16 comments, 11 articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule penalizes everyone for the actions of a few. The department disagrees that the rule is intended to be punitive. The rule is intended to slow or prevent the spread of zebra mussels by requiring that persons approaching or leaving public fresh water drain vessels and receptacles. Only those who do not comply will be subject to citation. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the rule does not address the spread of exotic species by wildlife or stream flow. The department agrees that the rule does not address the spread of exotic species by wildlife or stream flow and responds that it is intended to address the spread of exotic species by humans. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that the rule would be ineffective because there is nothing that can be done to prevent the spread of zebra mussels. The department agrees that combating the spread of exotic species is a difficult undertaking; however, the department disagrees that no action should be taken and responds that the department is charged by statute with enacting regulations to address the introduction of exotic species into public waters (Tex. Parks & Wild. Code §67.001; see, also, Tex. Parks & Wild. Code §12.0011). It is therefore necessary that the department take appropriate actions to slow or prevent the spread of exotic species. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule doesn't go far enough to be effective. The department agrees that combating the spread of exotic species is a difficult undertaking and notes that in addition to the adoption of the rule, the department is continuing its campaign to educate the public about zebra mussels and how to effectively clean, drain, and dry boats, trailers and gear in an effort to slow or prevent the spread of zebra mussels. The department disagrees that the inability to completely prevent the spread of zebra mussels should be a basis for not adopting the rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will impose an economic burden on fishing tournaments because of

reporting requirements and fines for violations. The department disagrees with the comment and responds that the rules contain provisions to allow tournament participants to transport fish for weighing and that those provisions are not burdensome or difficult to comply with. The department also notes that as with all rules that represent a significant departure from the status quo, there will be a robust public education and outreach effort to ensure that the public is aware of the rule and how to comply with it. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is a kneejerk reaction. The department disagrees with the comment and responds that the department's reaction has been measured and appropriate. The department has been concerned for many years about the negative impacts of exotic species and spent considerable time and effort in encouraging public awareness and voluntary efforts to prevent their spread. With respect to zebra mussels, the stakes were raised when mussels were confirmed in Texas waters. The department's response at that time was to implement rules tailored to affect specific water bodies where mussels had been discovered, but since then mussels have spread on a landscape scale, making a comprehensive rule necessary. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rule takes rights away from people who grow their own bait. The department disagrees with the comment and responds that rule applies only to the draining of public water on vessels and receptacles aboard vessels. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because the rule affects lakes and not creeks or rivers, it won't be effective. The department disagrees with the comment and responds that the rule affects all public fresh water in the state. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that it was impossible to drain all water from inboard engines and that at least some water will be retained on and within trailers. The department agrees with the comment that some water will be retained in boats; however, so long as drains and plugs are opened, most water should drain from boat systems, or enough to negate the boat's functionality as a transport of veligers. The department also notes that although the rule does not apply to trailers, the amount of water retained by trailer materials or parts would be minimal and any veligers on a trailer would be exposed to the elements, where they are unlikely to survive. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule places an undue burden on non-tournament anglers because cleaning dead fish poses a health risk. The department disagrees with the comment and responds that with proper planning and preparation it shouldn't be difficult to maintain fish in an edible condition. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would result in the waste of fish because fish would rot before they could be transported to the angler's residence for cleaning. The department disagrees with the comment and responds that putting the fish on ice in a cooler should preserve them until they reach a final destination and that cleaning the fish at a lakeside cleaning station and then packing in ice could serve the same function. No changes were made as a result of the comment.

One commenter opposed adoption and stated the regulations will prevent them from transporting live fish from or between water bodies. The department agrees that the rule will prevent the removal of live fish from the area immediately surrounding an affected water body, but disagrees that the desire to move live fish outweighs the need to protect water bodies from zebra mussels and responds that the transport of water contaminated with zebra mussel veligers beyond the immediate area presents a serious and unacceptable risk to water bodies where zebra mussels are not present. The department also notes that alternatives are available to anglers, such as transporting harvested fish in a cooler, transporting harvested baitfish without water, and fishing with artificial lures. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department should find a biological cure. The department agrees that an effective biological control that does not impact non-target species or the habitat would be an ideal solution, but at this point in time no such agent has been identified. Meanwhile, the rule as adopted is intended to at least impede the progress of zebra mussels until an effective control is discovered or developed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no exceptions to the rule for fishing tournament participants because the rule would be hard to enforce. The department disagrees and responds that department biologists believe the exception for tournament participants does not present a significant risk of spreading zebra mussels and department law enforcement personnel are confident that because tournaments are scheduled events the rule can be enforced effectively. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would make it an offense to possess melted ice in a cooler full of catfish. The department disagrees with the comment and responds that the rule applies to the possession of water from a public water body. No changes were made as a result of the comment.

One commenter opposed adoption and stated that lakes that share water should be considered a single body of water. The department agrees with the comment and responds that the rule affects all public fresh water equally. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule required too much paperwork. The department disagrees with the comment and responds the rule requires a person to possess a bill of sale or receipt for purchased bait fish or, in the case of fishing tournament participants, documentation provided by a fishing tournament representative that bears the participant's name and other information. The department does not regard either requirement as burdensome. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bait stores that operate on the honor system (i.e., with no person on-site to create a bill of sale to make possession of the bait fish legal) will be put out of business. The department disagrees with the comment and responds that these businesses could make receipts available that identify the source of the bait and attest that the bait is in water that did not come from a public water body and therefore the rule does not apply. No changes were made as a result of the comment.

One commenter opposed adoption and stated that without absolute enforcement the rule is useless. The department disagrees

that the rule is a guarantee that the spread of zebra mussels will be stopped; it is an attempt to slow and perhaps stop the spread of that organism to additional waterbodies. Department personnel will enforce the rule, and it is the expectation of the department that the public will comply. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should exclude live wells from the applicability of the rule. The department disagrees with the comment and responds that live wells represent a significant opportunity for infected water to be transported between water bodies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should be enforced by random checks of boats as they are launched. The department disagrees with the comment and responds that in order to have a statistically valid probability of preventing the introduction of zebra mussels into a water body, the department would have to sample hundreds of boats on every water body in the state, which is impractical. The department also believes that a universal rule will eventually result in compliance by force of habit and enforcement will be unnecessary. No changes were made as a result of the comment.

The department received 28 comments supporting adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §66.0073, which authorizes the commission to adopt rules requiring a person leaving or approaching public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with public water.

*§57.1001. Draining of Water from Vessels Leaving or Approaching Public Fresh Water.*

For the purposes of this section, "vessel" has the meaning assigned by Parks and Wildlife Code, §31.003, and "boat ramp" means a boat ramp, launch area, or any other access point that can be used to access public water, and includes parking areas, parking overflow areas, and any other area in the immediate vicinity of the ramp, launch, or access point where a vehicle, trailer, or vessel may be parked while waiting to launch or retrieve a vessel.

(1) General Provisions. Except as provided in paragraph (2) of this section, no person may use any public roadway other than a boat ramp to transport a vessel to or from a public water body to which the provisions of paragraph (3) of this section apply unless all bilges, live wells, and other similar receptacles and systems holding or capable of holding water on board the vessel as a result of immersion in or transfer from the public water body have been drained.

(2) Exceptions.

(A) The provisions of paragraph (1) of this section do not apply to:

(i) a person travelling on a public roadway via the most direct route to another access point located on the same body of water, provided the beginning and ending of the travel occur within a single 24-hour period;

(ii) water contained in marine sanitary systems;

(iii) a person in possession of a receptacle containing water and live bait purchased from a commercial bait dealer, provided:

(I) the person also possesses a dated receipt, bill of sale, or other written evidence that identifies the name and commercial location of the dealer; and

(II) the live bait, if it has come into contact with public water to which the provisions of paragraph (3) of this section apply, is used only on the water body from which the public water was obtained;

(iv) government employees or persons under contract to a governmental entity in the performance of official duties that involve the use of a vessel in an emergency response to a threat to human health or safety, or property; or

(v) a person who is a participant in a fishing tournament (as defined by Parks and Wildlife Code, §66.023), provided:

(I) the tournament fishing activities are restricted to a single public water body on any given day;

(II) the weigh-in site is not located on the body of water on which the tournament is held;

(III) all water other than water in a live well has been drained from the vessel as required by this section;

(IV) the live well is being transported by the most direct route to an official weigh-in location designated by the tournament;

(V) the water in the live well is drained or properly disposed of before the vessel leaves the weigh-in location; and

(VI) the person in possession of the water in the live well also possesses documentation provided by a fishing tournament representative that bears the participant's name, the date, water body name, tournament name, location and time of the weigh-in, and the name and phone number of a tournament representative.

(B) A government employee or persons under contract to a governmental entity may remove water for purposes of testing or analysis from a public water body to which the provisions of paragraph (3) of this section apply; however, the water must be in closed, portable container and all bilges, live wells, motors, and other similar receptacles and systems holding or capable of holding water on board the vessel as a result of immersion in or transfer from the public water body must be drained.

(3) This section applies to all public fresh water 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.

Filed with the Office of the Secretary of State on June 6, 2014.

TRD-201402664

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: June 26, 2014

Proposal publication date: April 18, 2014

For further information, please call: (512) 389-4775



CHAPTER 65. WILDLIFE

## SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

### 31 TAC §65.103

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 22, 2014, adopted an amendment to §65.103, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds (popularly known as "Triple T" permits), without changes to the proposed text as published in April 18, 2014, issue of the *Texas Register* (39 TexReg 3032).

The amendment removes current subsection (h), which prohibits the issuance of a Triple T permit to authorize the trapping of deer on a property if deer have been released on that property under a Deer Management Permit (DMP) in the same permit year. A DMP authorizes the permit holder to manage deer on acreage enclosed by a fence capable of retaining white-tailed deer in accordance with department regulations. Department regulations require deer held in a DMP pen to be released from the pen by a date specified by the department. Current department regulations do not permit the trapping of deer from a property pursuant to a Triple T permit if deer have been released onto that property from a DMP pen in the same permit year (September 1 - August 31). In reviewing the Triple T regulations, staff has determined that so long as a property from which deer will be trapped meets the criteria established in §65.103, concerning Trap, Transplant, and Transport Permit, it is immaterial that deer have been released there from a DMP pen. Although it is possible that a deer released from a DMP pen could have been introduced into the DMP pen from another property pursuant to Triple T permit or introduced to the DMP pen from a deer breeder facility, most deer released from DMP pens originate from the property from which deer are to be moved under the Triple T permit. As a result, there is no biological or enforcement reason to continue to disallow the trapping of deer from a property pursuant to a Triple T permit if deer have been released onto that property from a DMP pen in the same permit year. The amendment will reduce administrative burdens on department staff and offer greater flexibility to landowners and land managers.

The amendment will function by allowing the trapping of deer under a Triple T permit on a permit in the same year that deer were released onto the property under a DMP.

The department received three comments opposing adoption of the proposed amendment. Two of the commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the proposed amendment was tantamount to stealing public property. The department disagrees with the comment and responds that neither a Triple T permit nor a DMP permit confers any privileges of ownership of wildlife resources, which remain the property of the people of the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the DMP was created to improve the genetic quality of deer on a property and that allowing deer to be trapped under a Triple T in the same year that deer were released under a DMP would allow the development of an illegal underground trade in a public resource. The department disagrees with the comment and responds that Triple T permits will not be authorized if a prospective transplantation will result in negative impacts to the population at the

trap site or habitat or population issues at the release site. No changes were made as a result of the comment.

The Texas Deer Association commented in support of adoption of the proposed amendment.

No groups or associations commented in opposition to adoption of the proposed amendment.

The amendment is adopted under Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds.

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 June 9, 2014.

TRD-201402669

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: June 29, 2014

Proposal publication date: April 18, 2014

For further information, please call: (512) 389-4775



## SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

### 31 TAC §§65.132, 65.135, 65.136

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 22, 2014, adopted amendments to §§65.132, 65.135, and 65.136, concerning Deer Management Permit (DMP). Section 65.135 and §65.136 are adopted with changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3033). Section 65.132 is adopted without change and will not be republished.

The change to §65.135, concerning Detention of Deer, corrects an inconsistency in terminology. As proposed, subsection (b)(2)(B) refers to a permit to trap, transport, and transplant (or Triple T permit) "that authorizes the destination DMP pen as the release site." This is technically not possible, because the Triple T permit can only be issued for a property, not a pen. The change clarifies that if the source of deer for a DMP property is via Triple T permit, the Triple T permit must specify the DMP property as the release site.

The change to §65.136, concerning Release of Deer, increases the time period allowed for permit holders to notify the department following the release of deer from a deer management pen. As proposed, that time period was 24 hours; the adopted time period is 48 hours.

A Deer Management Permit (DMP) authorizes the permit holder to manage deer in accordance with department regulations on acreage enclosed by a fence capable of retaining white-tailed deer, including the temporary detention of deer for breeding purposes. Except for buck deer temporarily introduced to a DMP pen, department regulations require deer held in a DMP pen to be released from the pen by no later than the date specified by the department in the DMP.



The amendment to §65.132, concerning Permit Application, eliminates language that is no longer meaningful and clarifies the period of validity of a DMP. Current subsection (a) stipulates that incomplete applications for a DMP will be returned to the applicant and will not be processed until complete. The department has migrated to a completely electronic permit application process that will not accept a DMP application that is incomplete, making the current rule text regarding incomplete applications inapplicable; therefore, the amendment removes the reference to the return of incomplete applications.

Current §65.132(b) stipulates that a DMP is valid from the date of issuance through the last date on which deer are authorized to be released as specified in the permit. The department wishes to clarify that permit validity ceases when deer held under a DMP are released. The department also seeks to prevent the provision from being misinterpreted to mean that if deer are released prior to the expiration date indicated on the permit, additional trapping and breeding activities are authorized. Therefore, the amendment clarifies that a DMP is valid through the last release date authorized on the permit or the day that release occurs, whichever comes first.

The amendment to §65.135, concerning Detention of Deer, allows the replacement (through January 31 of the permit year) of buck deer that die within a DMP pen. The department has been contacted by a permit holder who inquired as to the legality of replacing buck deer that die within a DMP. The permit holder was concerned that if a buck were to die before being able to breed the does in a DMP pen, the expense and trouble of the permitted activities would be fruitless. The department reasons that since DMP activities are authorized for a specific place and time under a department-approved deer management plan, there are no biological or enforcement concerns associated with allowing the replacement of buck deer through January 31 in the event of mortality. Therefore, the amendment allows the replacement of a dead buck in a DMP pen, following notification of the department and so long as the replacement buck is obtained from one of the following sources: the acreage for which the DMP was issued; the holder of a permit to trap, transport, and transplant (TTT permit) game animals and game birds (provided the DMP holder's deer management plan authorizes the introduction of deer through a TTT permit and the property for which the DMP has been issued is an authorized release site under the TTT permit); or the holder of a deer breeder permit (provided the DMP holder's deer management plan authorizes the introduction of deer from a deer breeder facility). The caveats regarding the sources of replacement deer are necessary to ensure that deer introduced to a DMP pen are not unlawfully obtained. The notification requirement is necessary to ensure that department records reflecting the number and disposition of deer held under a DMP are accurate and to ensure compliance with the requirement that no more than one buck deer be in a DMP pen at any time.

The amendment to §65.136, concerning Release of Deer, alters subsection (c) to reiterate that a DMP expires when deer are released, as discussed earlier in this preamble. The amendment adds new subsection (e) to require a DMP holder to notify the department within 48 hours after the release of deer from a DMP pen. Under current rule, DMP holders are not required to notify the department when deer are released. When a DMP is issued, the department specifies the last day that deer can be retained in the DMP pen, but this does not prohibit a DMP holder from releasing deer prior to that date. Because the period of validity

of a DMP terminates when deer are released, the potential exists for the department to be unaware that permit activities have concluded prior to the expiration date on the permit, which could cause confusion and misunderstandings. Therefore, in order to ensure that department records are kept as current as possible for purposes of efficient administration and enforcement, the amendment specifies that a DMP holder notify the department by no later than 48 hours following the release of deer from a DMP pen.

The amendment to §65.132 will function by establishing the period of validity of a DMP and comports regulatory language with agency practice.

The amendment to §65.135 will function by allowing the replacement of buck deer that die within a DMP pen.

The amendment to §65.136 will function by establishing the conditions for expiration of a DMP and creating a notification requirement with respect to the release of deer from a DMP pen.

The department received eight comments opposing adoption of the proposed amendments. Of the eight comments, six articulated a specific rationale or reason for opposition. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that breeding deer in captivity is privatization of a public resource and should be unlawful. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter R, the department may issue a permit for the management of wild white-tailed deer and stipulates that deer managed under a DMP remain the property of the people of the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed rules fail to provide service to the applicant by not letting the applicant know when an application is deficient. The department disagrees with the comment and responds that an applicant will always know the status of an application because the department's system will not accept an incomplete application. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the department should notify an applicant that an application is incomplete or deficient. The department agrees with the commenter and responds that the department's system will not accept an application that is incomplete or deficient and prompts the user for the necessary information. As a result, the applicant is essentially notified that an application is deficient. No changes were made as a result of the comments.

One commenter opposed adoption and stated that period for reporting the release of deer should be 72 hours, as opposed to 24 hours, because of unreliable cell phone coverage in remote areas of the state. The department agrees with the commenter that the time period as proposed could potentially be problematic, but disagrees that 72 hours is appropriate because the department must have the ability to verify that release has occurred, if necessary, and 72 hours is too great a time period. The department has increased the time period to 48 hours.

The department received 10 comments supporting adoption of the proposed amendments.

The Texas Deer Association commented in support of the rules as proposed, with the exception of the provision requiring notification within 24 hours following release of deer from a DMP pen.

No groups or associations commented in opposition to the adoption of the proposed amendments.

The amendments are adopted under Parks and Wildlife Code, §43.603, which authorizes the commission to establish conditions for the deer management permit.

§65.135. *Detention of Deer.*

(a) No trapping of deer under a DMP may take place between December 15 and August 31 of any year.

(b) The holder of valid DMP may replace a buck deer that dies in a DMP pen after being lawfully introduced, provided:

(1) such replacement takes place no later than January 31 of the current permit year; and

(2) the replacement buck deer to be introduced to a DMP pen under the provisions of this subsection is obtained from:

(A) the acreage for which the DMP was issued;

(B) the holder of a valid permit issued under the provisions of Subchapter C of this chapter (relating to Permits to Trap, Transport, and Transplant Game Animals and Game Birds) that authorizes the DMP property as the release site; or

(C) the holder of a valid permit held under the provisions of Subchapter T of this chapter (relating to Deer Breeder Permits), if the DMP holder's deer management plan authorizes the introduction of deer from a deer breeder facility.

(c) The replacement of a buck deer under the provisions of subsection (b) of this section may not take place until after the department has been notified via the department's Internet-based notification system that:

(1) the death of a buck deer in a DMP pen has occurred; and

(2) the DMP holder intends to replace the dead buck deer.

§65.136. *Release of Deer.*

(a) Release of deer shall be effected by removing, for a total of at least 20 feet, those components of a pen that serve to maintain deer

in a state of detention within the pen; however, no opening shall be less than 10 feet in width. Such components shall be removed for no fewer than 30 consecutive days.

(b) At any time that components of a pen are removed or manipulated for the purposes of releasing wild deer, all externally provided food and water (i.e., food or water that does not naturally occur at the site) shall be removed or made inaccessible to deer for no fewer than 30 days.

(c) All deer within a DMP pen shall be released on or before the date specified for the facility by the department. The period of validity for a DMP terminates when any deer are released under the provisions of this section.

(d) Except for deer authorized by the department for release elsewhere under a permit to trap, transport, and transplant game animals and game birds, all deer released from a DMP pen shall be released directly into the pasture where they were captured for the purposes of activities under this subchapter.

(e) The holder of a DMP shall notify the department no later than 48 hours following the release of deer under this section. The notification shall be via the department's Internet-based notification application.

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 June 9, 2014.

TRD-201402668

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: June 29, 2014

Proposal publication date: April 18, 2014

For further information, please call: (512) 389-4775



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

---

## Proposed Rule Reviews

Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §151.21, concerning Weapons Policy. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years. Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes the repeal of §151.21.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342; [Sharon.Howell@tdcj.state.tx.us](mailto:Sharon.Howell@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201402672  
Sharon Felfe Howell  
General Counsel  
Texas Department of Criminal Justice  
Filed: June 9, 2014



The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §152.71, concerning Acceptance of Gifts Related to Buildings for Religious and Programmatic Purposes. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §152.71.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342; [Sharon.Howell@tdcj.state.tx.us](mailto:Sharon.Howell@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201402673  
Sharon Felfe Howell  
General Counsel  
Texas Department of Criminal Justice  
Filed: June 9, 2014



The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §159.9, concerning the Firearms Proficiency Training for Supervision Officers/Memorandum of Understanding. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §159.9.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342; [Sharon.Howell@tdcj.state.tx.us](mailto:Sharon.Howell@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201402674  
Sharon Felfe Howell  
General Counsel  
Texas Department of Criminal Justice  
Filed: June 9, 2014



The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §163.35, concerning Supervision. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.35.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342; [Sharon.Howell@tdcj.state.tx.us](mailto:Sharon.Howell@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201402676  
Sharon Felfe Howell  
General Counsel  
Texas Department of Criminal Justice  
Filed: June 9, 2014



Texas  
is the  
STATE!

Jose Lara  
4th Grade



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §26.405(g)(1)

Residential Line Density Per Square Mile	Proxy Per-Line Support Amount
0 to 2.49	\$120.53
2.50 to 4.99	\$69.82
5 to 9.99	\$46.46
10 to 14.99	\$31.45
15 to 19.99	\$18.81
20 to 24.99	\$14.78
25 to 29.99	\$10.51
30 to 49.99	\$4.33
50 or greater	\$1.83

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE TEXAS COMMISSION ON LAW ENFORCEMENT AND**  
**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

This Memorandum of Understanding (MOU) is entered into by The Texas Commission on Law Enforcement (Commission) and the Texas Department of Criminal Justice (Department) under Tex. Occ. Code §1701.257.

As such, the Commission and Department enter into this MOU to establish responsibilities in developing a basic training program in the use of firearms by community supervision and corrections department officers (CSCDO) and parole officers (PO). The program established under this MOU must provide instruction in:

1. Legal limitations on the use of firearms and on the powers and authority of the CSCDO and PO;
2. Range firing and procedure;
3. Firearms safety and maintenance; and
4. Other topics determined by each agency to be necessary for the responsible use of firearms by the CSCDO and PO.

In consideration of the mutual benefits of both parties, it is agreed:

1. CSCDO and PO are not "County Jailer(s)," "officers," or "Peace Officers" as defined by Tex. Occ. Code §1701.001.
2. The Department shall, on the basis of training needs, develop instructor lesson plans containing learning objectives and student evaluations for each course. The provided courses shall be in accordance with the Commission's rules or as approved in writing by the Commission.
3. The Department shall obtain access to Texas Commission on Law Enforcement Data Distribution System (TCLEDDS) and submit to the Commission, *via* TCLEDDS, a report of training for each course conducted.

4. The Commission will issue a certificate of firearms proficiency to each CSCDO and PO after successful completion of a program established under this MOU.
  
5. The Commission may suspend this MOU if the Department is found to be unsatisfactory under the risk assessment process as defined by Tex. Occ. Code ch. 1701 or Commission rules. The Commission shall reinstate this MOU once the Department has made the necessary changes as directed by the Commission.

Executed in two originals on the dates shown.

Texas Commission on Law Enforcement

Texas Department of Criminal Justice

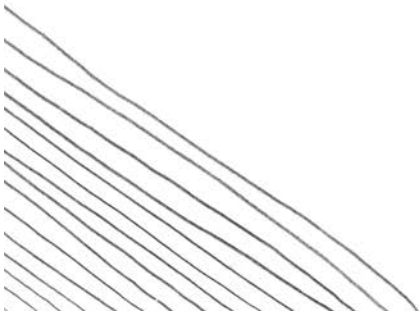
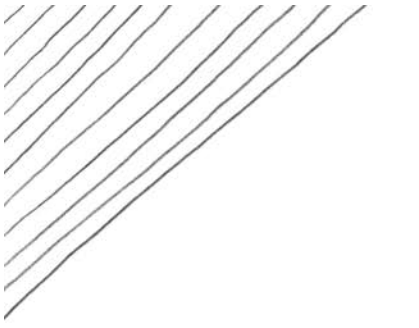
BY: \_\_\_\_\_  
Kim Vickers,  
Executive Director

BY: \_\_\_\_\_  
Brad Livingston,  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Diana Diaz  
6th Grade*





# 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.

## Cancer Prevention and Research Institute of Texas

Notification of Award

Request for Proposals #542-14-0060 for Compliance Program Design

Proposals Opened: April 14, 2014

Contract Term: June 10, 2014 - August 31, 2014

Amount: \$99,000

Awarded to: Weaver and Tidwell LLP c/o Adam Jones

Title: Director of State Government Services

Address: 12221 Merit Drive, Suite 1400, Dallas, Texas 75251

This Notice of Award informs you that the Cancer Prevention and Research Institute of Texas accepts the offer made by Weaver and Tidwell LLP. A contract has been signed to document the agreement.

The services listed on the above-referenced RFP must be provided as specified. All terms and conditions set forth in the RFP are made part of the contract.

TRD-201402709

Wayne Roberts

Chief Executive Officer

Cancer Prevention and Research Institute of Texas

Filed: June 11, 2014

## Comptroller of Public Accounts

Local Sales Tax Rate Change Notice Effective July 1, 2014

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective July 1, 2014 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
New Berlin (Guadalupe Co)	2094052	.017500	.080000

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government code, Type B Corporations (4B) will become effective July 1, 2014 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Bartlett (Bell Co)	2246077	.020000	.082500
Bartlett (Williamson Co)	2246077	.020000	.082500

A 1/2 percent special purpose district sales and use tax will become effective July 1, 2014 in the special purpose districts listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Bartlett Municipal Development District	5246549	.005000	SEE NOTE 1

NOTE 1: The Bartlett Municipal Development District is the portion of the city of Bartlett located in Williamson County. The district does not include any area of the City of Bartlett in Bell County. Contact the City of Bartlett at (254) 527-3219 for additional boundary information.

TRD-201402710  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Filed: June 11, 2014

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces this

notice of contract award under Request for Proposals (RFP #207f) for Outside Counsel Services for the Texas Prepaid Higher Education Tuition Board.

The contract was awarded to Graves, Dougherty, Hearon & Moody, located at 401 Congress Avenue, Suite 2200, Austin, Texas 78701. The term of the contract is September 1, 2014, through August 31, 2016, with option to renew for up to two (2) additional one-year periods, one year at a time. The total amount of the Contract is not to exceed \$150,000.00.

TRD-201402717  
Robin Reilly  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: June 11, 2014



### Notice of Contract Award

Pursuant to §403.452 and Chapter 771 of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces the award of the following contract as a result of Request for Proposals for the Endangered Species Research Projects for Freshwater Mussels ("RFP 207c"):

Texas A&M AgriLife Research, 400 Harvey Mitchell Pkwy., Suite 300, College Station, Texas 77845-4375. The total maximum amount of the contract is \$599,928.00. The term of the contract is June 4, 2014 through May 31, 2017.

The notice of issuance was published in the January 31, 2014, issue of *Texas Register* (39 TexReg 510).

TRD-201402724  
Robin Reilly  
Assistant General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: June 11, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/16/14 - 06/22/14 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 06/16/14 - 06/22/14 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201402694  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: June 10, 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 **July 21, 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 July 21, 2014**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: AES Deepwater, LLC; DOCKET NUMBER: 2014-0498-AIR-E; IDENTIFIER: RN100216837; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: electric power generation plant; RULE VIOLATED: 30 TAC §§122.143(4) and (15), 122.146(1), and 122.165(a)(8), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O95, General Terms and Conditions (GTC) and Special Terms and Conditions Number 11, by failing to certify compliance for at least each 12-month period following initial permit issuance; 30 TAC §§122.143(4), 122.145(2)(A) and (B) and 122.165(a)(7), THSC, §382.085(b), and FOP Number O95, GTC, by failing to submit a deviation report for at least each six-month period after permit issuance; 30 TAC §117.1220(a) and §122.143(4) and THSC, §382.085(b), by failing to comply with the maximum daily system cap for nitrogen oxides; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b) and FOP Number O95, GTC, by failing to report all instances of deviations; and 30 TAC §117.1245(d) and §122.143(4) and THSC, §382.085(b), by failing to submit a continuous emissions monitoring system semiannual report within 30 days following the end of each calendar semiannual period; PENALTY: \$17,124; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Alcorp, Incorporated dba Webberville Grocery; DOCKET NUMBER: 2014-0528-PST-E; IDENTIFIER: RN101491777; LOCATION: Webberville, Travis 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: \$4,500; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583;

REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(3) COMPANY: Anadarko Gathering Company LLC; DOCKET NUMBER: 2014-0509-AIR-E; IDENTIFIER: RN102497591; LOCATION: Dew, Freestone County; TYPE OF FACILITY: natural gas liquids pipeline pumping station and storage facility; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O2454 General Terms and Conditions/General Operating Permit Number 514, by failing to submit a permit compliance certification within 30 days after the end of the certification period; PENALTY: \$2,888; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: ANDERSON WATER COMPANY, INCORPORATED; DOCKET NUMBER: 2014-0256-PWS-E; IDENTIFIER: RN101219426; LOCATION: Roans Prairie, Grimes County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(i)(1), by failing to provide the results of lead and copper sampling to the executive director for the January 1, 2013 - June 30, 2013 monitoring period; 30 TAC §290.117(i)(5) and (k), by failing to deliver the public education materials in the event of an exceedance of the lead action level and to continue the delivery of the public education materials for as long as the lead action level was not met; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements; PENALTY: \$572; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Apple Incorporated; DOCKET NUMBER: 2014-0419-EAQ-E; IDENTIFIER: RN105366561; LOCATION: Austin, Travis County; TYPE OF FACILITY: commercial office construction site; RULE VIOLATED: 30 TAC §213.2 and §213.4(k), and Water Pollution Abatement Plan (WPAP) and Sewage Collection System Plan (SCSP) Numbers 11-13011602 and 11-13011603, by failing to obtain approval from the executive director prior to initiating additional regulated activities over the Edwards Aquifer Recharge Zone outlined in the WPAP and SCSP that was approved on March 19, 2013; PENALTY: \$27,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(6) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2014-0193-MWD-E; IDENTIFIER: RN101518926; LOCATION: Sunrise Beach, Burnet County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011332001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$6,637; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: BUSINESSCHASE, INCORPORATED dba Town & Country; DOCKET NUMBER: 2014-0233-PST-E; IDENTIFIER: RN102866191; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II

vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §115.242(d)(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; and 30 TAC §115.246(a)(1) and (b)(2) and THSC, §382.085(b), by failing to maintain Stage II records at the station; PENALTY: \$5,163; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: City of Carrizo Springs; DOCKET NUMBER: 2014-0472-PWS-E; IDENTIFIER: RN101391613; LOCATION: Carrizo Springs, Dimmit County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(a)(2), by failing to provide public notification regarding the collection of a positive raw groundwater source sample on April 13, 2011; 30 TAC §290.110(e)(4)(A) and (f)(3), and §290.122(c)(2)(A), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter and failed to provide public notification regarding the failure to submit DLQORs; 30 TAC §290.106(c)(6) and (e), and §290.122(c)(2)(A), by failing to collect the annual nitrate sample and provide the results to the executive director for the 2011, 2012, and 2013 monitoring periods at Entry Point Number 3 and failing to provide public notification regarding the failure to collect nitrate samples for the 2012 monitoring period; 30 TAC §290.106(c)(4) and (e), and §290.107(c)(1) and (e), by failing to collect the triennial minerals, synthetic organic chemical contaminants, and synthetic organic chemical contaminants samples and provide the results to the executive director; 30 TAC §290.106(c)(4) and (e) and §290.107(c)(2) and (e), by failing to collect the six-year metals and volatile organic chemical contaminants samples and provide the results to the executive director for the January 1, 2006 - December 31, 2011 monitoring period; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements; PENALTY: \$3,451; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: City of The Colony; DOCKET NUMBER: 2013-1363-MWD-E; IDENTIFIER: RN102080157; LOCATION: The Colony, Denton County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011570001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of untreated waste from collection system into or adjacent to water in the state; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0011570001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(9) and TPDES Permit Number WQ0011570001, Monitoring and Reporting Requirements Number 7.a, by failing to notify the TCEQ Regional Office and the Enforcement Division within 24 hours of becoming aware of the noncompliance; 30 TAC §210.36(2) and (A) and (B) and TCEQ Permit Number R11570-001, V. Record Keeping and Reporting Requirements (a)(2)(A) and (B), by failing to timely submit monthly reports regarding reclaimed water quality and quantity at the intervals specified in the permit;

30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WQ0011570001, Monitoring and Reporting Requirements Number 5, by failing to calibrate all flow measuring devices/meters on an annual basis; TWC, §37.003, 30 TAC §30.331(b) and §30.350(d), and TPDES Permit Number WQ0011570001, Other Requirements Number 1, by failing to employ an adequately licensed individual to perform/supervise the operation and maintenance of the facility and all of its systems; and 30 TAC §217.328(a) and §305.125(1) and (5) and TPDES Permit Number WQ0011570001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems; PENALTY: \$38,438; Supplemental Environmental Project offset amount of \$30,757 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: East Riviera Water Supply Corporation; DOCKET NUMBER: 2014-0493-PWS-E; IDENTIFIER: RN102674421; LOCATION: Riviera, Kleberg County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of each quarter and failed to provide public notification regarding the failure to submit a DLQOR to the executive director; 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from the two active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of November 2013; 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to conduct repeat coliform monitoring following a coliform-positive result for the month of November 2013; 30 TAC §290.108(e), by failing to timely provide the results of sexennial radionuclides sampling to the executive director for the January 1, 2008 to December 31, 2013 monitoring period; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper samples at the required five sample sites and provide the results to the executive director for the triennial reduced monitoring period from January 1, 2011 to December 31, 2013; PENALTY: \$755; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: Enbridge G & P (North Texas) L.P.; DOCKET NUMBER: 2013-1854-AIR-E; IDENTIFIER: RN100209469; LOCATION: Gordon, Palo Pinto County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization for sources of air emissions prior to construction and operation; 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), THSC, §382.085(b), Federal Operating Permit (FOP) Number O3123, Special Terms and Conditions (STC) Number 7, and Standard Permit Registration Number 72937, by failing to comply with maximum allowable emission rates; 30 TAC §116.615(8) and THSC, §382.085(b), by failing to maintain a copy of the standard permit at the plant; 30 TAC §122.143(4) and §122.147(a)(1), THSC, §382.085(b), and FOP Number O3123, STC Number 7.A, by failing to comply with compliance assurance monitoring requirements; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O3123, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: \$62,461; Supplemental Environmental Project offset amount of \$24,985 applied to Railroad Commission of Texas; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2014-0371-IWD-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: chemical manufacturing facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0002940000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0002940000, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring results for Outfall TX2Y for the monitoring period ending December 31, 2013; PENALTY: \$8,000; Supplemental Environmental Project offset amount of \$3,200 applied to The Conservation Fund; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Harvey Ike Thomas; DOCKET NUMBER: 2014-0362-WR-E; IDENTIFIER: RN106586639; LOCATION: Hood County; TYPE OF FACILITY: property owner; RULE VIOLATED: 30 TAC §297.82, by failing to inform the executive director of a transfer of a water right for Certificate of Adjudication Number 12-4114; PENALTY: \$250; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: James L. Oxford dba Country Villa Mobile Home Park; DOCKET NUMBER: 2014-0491-PWS-E; IDENTIFIER: RN101441764; LOCATION: Beeville, Bee County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: \$210; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: Morton Road Municipal Utility District; DOCKET NUMBER: 2014-0259-PWS-E; IDENTIFIER: RN102677481; LOCATION: Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picoCuries per liter for gross alpha particle activity based on the running annual average; PENALTY: \$165; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: MZ BEST CLEANERS, INCORPORATED dba Best Cleaners; DOCKET NUMBER: 2014-0066-DCL-E; IDENTIFIER: RN103962460; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste or dry cleaning wastewater; 30 TAC §337.72(1) and (2), by failing to maintain documentation of the dry cleaning solvent purchases and dry cleaning waste disposal records; PENALTY: \$3,070; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Rip Thornburg dba RRR Construction Enterprises; DOCKET NUMBER: 2014-0254-AIR-E; IDENTIFIER: RN106843428; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: portable rock crusher; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a rock crusher; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3553; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: South Hampton Resources, Incorporated; DOCKET NUMBER: 2014-0466-AIR-E; IDENTIFIER: RN101995611; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: distillation and chemical toll processing facility; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2776, Special Terms and Conditions Number 13, and New Source Review Permit Number 3295, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$4,463; Supplemental Environmental Project offset amount of \$1,785 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: STX Process Equipment LLC; DOCKET NUMBER: 2014-0216-PWS-E; IDENTIFIER: RN105830186; LOCATION: Freer, Duval County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected in December 2013; and 30 TAC §290.122(a)(2) and (c)(2)(A), by failing to post public notification regarding the failure to comply with the acute maximum contaminant level for nitrate for the third quarter of 2013 and the failure to conduct routine coliform monitoring for July 2013; PENALTY: \$1,980; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(19) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2013-2215-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(2), 116.115(c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), 40 Code of Federal Regulation §63.1362(a), Federal Operating Permit (FOP) Number O2206, Special Terms & Conditions (STC) Number 13, and New Source Review (NSR) Permit Number 770, Special Conditions (SC) Numbers 1 and 11C, by failing to comply with maximum allowable hourly emissions rates; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O2697, STC Number 14, and NSR Permit Numbers 46306, PSDTX986, and N059, SC Number 1, by failing to comply with maximum allowable hourly emissions rates; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), THSC, §382.085(b), FOP Number O2204, STC Number 15, and NSR Permit Number 19041, SC Number 1, by failing to comply with maximum allowable hourly emissions rates; 30 TAC §§101.20(3), 116.115(a), and 122.143(4), THSC, §382.085(b),

FOP Number O2213, STC Number 21, and NSR Permit Numbers 20432 and PSD-TX-994M1, SC Number 1, by failing to prevent unauthorized emissions; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2215, STC Number 11, and NSR Permit Number 834, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: \$49,726; Supplemental Environmental Project offset amount of \$19,890 applied to Houston-Galveston Area Council-AERCO; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2014-0300-AIR-E; IDENTIFIER: RN102414232; LOCATION: La Porte, Harris County; TYPE OF FACILITY: industrial organic chemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1365, General Terms and Conditions, by failing to report all instances of deviations; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1365, Special Terms and Conditions Numbers 1A and 15, and New Source Review Permit Number 48189, Special Conditions Number 6, by failing to conduct quarterly leak detection and repair monitoring of all applicable components; PENALTY: \$31,960; Supplemental Environmental Project offset amount of \$12,784 applied to Houston-Galveston Area Council-AERCO; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: TPC Group LLC; DOCKET NUMBER: 2014-0263-AIR-E; IDENTIFIER: RN102800315; LOCATION: Baytown, Harris County; TYPE OF FACILITY: organic manufacturing facility and bulk storage terminal; RULE VIOLATED: 30 TAC §115.722(c)(2) and §116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 9348, Special Conditions Number 1, by failing to prevent unauthorized emissions and exceeded the 1,200 pounds per hour emissions limit for highly reactive volatile organic compounds; PENALTY: \$6,000; Supplemental Environmental Project offset amount of \$2,400 applied to Harris County; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: TXI Operations, LP; DOCKET NUMBER: 2014-0176-IWD-E; IDENTIFIER: RN102740073; LOCATION: Frisco, Denton County; TYPE OF FACILITY: ready-mix concrete plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG110167, Part IV Standard Permit Conditions Number 7.f, by failing to timely submit the discharge monitoring reports, for Outfall Number 001 for the monitoring periods ending August 31, 2013, and September 30, 2013; and for Outfall Number 002 for the monitoring periods ending February 28, 2013, through September 30, 2013, by the 20th day of the following month; 30 TAC §305.125(1) and (17) and TPDES General Permit Number TXG110167, Part IV Standard Permit Conditions Number 7.f, by failing to timely submit the monitoring results for hazardous metals at Outfall Number 001 for the annual monitoring period ending January 31, 2013, by the 20th day of the following month; 30 TAC §305.125(1) and (17) and TPDES General Permit Number TXG110167, Part III Permit Requirements, Section A.2.a.iii and Part IV Standard Permit Conditions Number 7.f, by failing to timely submit the results for whole effluent toxicity for Outfall Numbers 001 and 002 for the annual monitoring period ending January 31, 2013, by the 20th day of the following month; and TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES General Permit Number TXG110167, Part III Permit Requirements, Section

A and Part IV Standard Permit Conditions Number 7.a, by failing to collect and analyze samples for hazardous metals; PENALTY: \$5,619; Supplemental Environmental Project offset amount of \$2,248 applied to Galveston Bay Foundation, Incorporated; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201402692

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 10, 2014



#### Enforcement Orders

An agreed order was entered regarding Granville Geronimo Martin III and Judy K. Martin dba Luke's Mobile Home Community, Docket No. 2012-1102-PWS-E on May 30, 2014 assessing \$2,147 in administrative penalties with \$429 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 PARS SERVICE, INC. dba Valley View Mobil, Docket No. 2012-1855-PST-E on May 30, 2014 assessing \$1,898 in administrative penalties with \$379 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.

A field citation was entered regarding Marta Enterprises Inc dba Gulfway Quick Mart, Docket No. 2012-2260-PST-E on May 30, 2014 assessing \$2,625 in administrative penalties.

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 Texas Farm Bureau Business Corporation, Docket No. 2013-0937-PST-E on May 30, 2014 assessing \$2,291 in administrative penalties with \$457 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enduring Resources, LLC and Stellar Oilfield Rentals, LLC, Docket No. 2013-1026-MLM-E on May 30, 2014 assessing \$2,475 in administrative penalties with \$495 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 Alfredo Maldonado, Jr. dba AM Truck Repair, Docket No. 2013-1034-MLM-E on May 30, 2014 assessing \$1,187 in administrative penalties with \$237 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 Richard K. Phan dba Chevron Food Mart, Docket No. 2013-1374-PST-E on May 30, 2014 assessing \$3,130 in administrative penalties with \$626 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dian D. Benson and Hollis Alvin Daniels, Jr., Docket No. 2013-1403-MSW-E on May 30, 2014 assessing \$1,125 in administrative penalties with \$225 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 Virginia Franklin Fuller dba Franklin Water Systems 1, Docket No. 2013-1558-PWS-E on May 30, 2014 assessing \$3,443 in administrative penalties with \$687 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 CHRISTUS HEALTH dba Christus St. Mary Hospital, Docket No. 2013-1574-PST-E on May 30, 2014 assessing \$6,750 in administrative penalties with \$1,350 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 Samsung Austin Semiconductor, LLC, Docket No. 2013-1753-AIR-E on May 30, 2014 assessing \$5,400 in administrative penalties with \$1,080 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 Martinsville Independent School District, Docket No. 2013-1918-MWD-E on May 30, 2014 assessing \$3,938 in administrative penalties with \$787 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Evodio Cruz dba Quality Marble, Docket No. 2013-2025-MLM-E on May 30, 2014 assessing \$4,765 in administrative penalties with \$953 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 Lucky's Redi-Mix Co. LLC, Docket No. 2013-2076-WQ-E on May 30, 2014 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenedy County, Docket No. 2013-2083-PWS-E on May 30, 2014 assessing \$1,016 in administrative penalties with \$203 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 Swindoll Industrial Services Inc., Docket No. 2013-2167-AIR-E on May 30, 2014 assessing \$3,750 in administrative penalties with \$750 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 OLYMPIA REALTY CORPORATION DBA WHISPERING PINES GOLF CLUB, Docket No. 2013-2218-PWS-E on May 30, 2014 assessing \$613 in administrative penalties with \$122 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 DISCOVERY PLAYHOUSE LEARNING CENTER, INC. dba Discovery Playhouse, Docket No. 2014-0065-PWS-E on May 30, 2014 assessing \$3,485 in administrative penalties with \$696 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 Monarch Utilities I.L.P., Docket No. 2014-0067-PWS-E on May 30, 2014 assessing \$3,403 in administrative penalties with \$680 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 Brady, Docket No. 2014-0071-PWS-E on May 30, 2014 assessing \$455 in administrative penalties with \$91 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 Rosetta Resources Operating LP, Docket No. 2014-0082-AIR-E on May 30, 2014 assessing \$3,750 in administrative penalties with \$750 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 PSC Custom, LP dba Polar Services Center, Docket No. 2014-0108-PWS-E on May 30, 2014 assessing \$1,751 in administrative penalties with \$350 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 Fasken Oil and Ranch, Ltd., Docket No. 2014-0114-AIR-E on May 30, 2014 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I.L.P., Docket No. 2014-0123-PWS-E on May 30, 2014 assessing \$1,402 in administrative penalties with \$280 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 Lookout Development Group, L.P., Docket No. 2014-0149-EAQ-E on May 30, 2014 assessing \$6,750 in administrative penalties with \$1,350 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 Town of Quintana, Docket No. 2014-0165-PWS-E on May 30, 2014 assessing \$411 in administrative penalties with \$82 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M&L WATER SUPPLY CORPORATION, Docket No. 2014-0186-PWS-E on May 30, 2014 assessing \$817 in administrative penalties with \$163 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W. D. DURHAM, LLC dba Take A Break, Docket No. 2012-0306-PST-E on June 3, 2014 assessing \$2,637 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 Bert Marcel Velsen, and Heidi Velsen, dba OSVE Dairy, Docket No. 2012-1194-AGR-E on June 3, 2014 assessing \$1,953 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, 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 KUNWAR INCORPORATED dba Bear Creek Food Mart, Docket No. 2012-1577-PST-E on June 3, 2014 assessing \$5,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. 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 Doyle Anderton, Docket No. 2012-1782-WQ-E on June 3, 2014 assessing \$2,625 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 VK Real Estate LLC, Docket No. 2012-1900-EAQ-E on June 3, 2014 assessing \$3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, 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 John Horace Edwards, Docket No. 2012-2508-MSW-E on June 3, 2014 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Aviation Administration, Docket No. 2012-2580-PST-E on June 3, 2014 assessing \$5,750 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 MONA ENTERPRISES, INC. dba Shop In Market, Docket No. 2012-2721-PST-E on June 3, 2014 assessing \$4,631 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, 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 SLA Business, Inc. dba Express Mart, Docket No. 2013-0576-PST-E on June 3, 2014 assessing \$3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, 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 BUSINESSCHASE, INC. dba Town & Country, Docket No. 2013-0729-PST-E on June 3, 2014 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, 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 Faim Enterprises Inc. dba M & M Express, Docket No. 2013-0817-PST-E on June 3, 2014 assessing \$4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 T & G MHP, Inc. dba Country Oaks Mobile Home Park, Docket No. 2013-0826-PWS-E on June 3, 2014 assessing \$937 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, 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 TEXAS GIANT KIM'S, INC. dba Stateline Citgo, Docket No. 2013-0980-PST-E on June 3, 2014 assessing \$5,855 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy 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 ATJ Ventures, Inc. dba Handy Spot 2, Docket No. 2013-1033-PST-E on June 3, 2014 assessing \$7,308 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, 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 Lone Star Petroleum, LP dba Hayes Food Mart, Docket No. 2013-1131-PST-E on June 3, 2014 assessing \$2,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy 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 DALCO SOLVENTS & CHEMICALS, INC., Docket No. 2013-1181-DCL-E on June 3, 2014 assessing \$4,550 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 POOLA INVESTMENTS INC. dba Cash Corner, Docket No. 2013-1221-PST-E on June 3, 2014 assessing \$3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Melina Lerma dba Tienda La Esquina, Docket No. 2013-1437-PST-E on June 3, 2014 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 sewa ro Inc. dba Bardwell Food Mart, Docket No. 2013-1443-PST-E on June 3, 2014 assessing \$2,942 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 KYUNGSOON ENTERPRISE, INC. fka KIM'S P&E INC. dba D&J Grocery, Docket No. 2013-1498-PST-E on June 3, 2014 assessing \$3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 Karedia Business, Inc. dba Food Mart, Docket No. 2013-1645-PST-E on June 3, 2014 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A&J BUSINESS PARTNERS, LLC dba A&J FOOD MART, Docket No. 2013-1714-PST-E on June 3, 2014 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan M. Bailey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201402715

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 11, 2014



## Notice of District Hearings

Notices issued May 29, 2014.

TCEQ Docket No. 2014-0551-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for conversion of Matagorda County Water Control and Improvement District No. 2 (District) to a Municipal Utility District (Application). The Application was filed with the TCEQ and included a certified copy of a resolution by the District's Board of Directors (Applicant). The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, August 20, 2014, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas.

The District contains approximately 759.6 acres of land within Matagorda County. The District's boundaries and properties currently excluded from the District are set forth in property descriptions available for public review upon request at either the District's office or at the TCEQ's office. A copy of the District's site map is available for public review upon request at either the District's office or at the TCEQ's office. The District was created as a water control and improvement district by the State Board of Water Engineers on November 8, 1954, with the powers authorized by Texas Water Code §51.331, under Article XVI, Section 59 of the Texas Constitution with

the authority to provide water service, dispose of waste and control storm water. The Applicant adopted and entered in its minutes a resolution in which the Applicant determined that conversion to a municipal utility district would serve the District's best interest and would be a benefit to land and property included in the District.

HEARING. As required by the Texas Water Code Chapter §54.032 and Title 30 of the Texas Administrative Code §293.15, the above hearing regarding this application will be held no earlier than 14 days after notice of this hearing is published in a newspaper with general circulation in the county or counties in which the District is located. The purpose of this hearing is to provide all interested persons the opportunity to appear and offer testimony for or against the proposal contained in the resolution.

At the hearing, pursuant to the Texas Water Code §54.033 the Commission will determine if converting the current district into a municipal utility district, that operates under Texas Water Code Chapter 54 would serve the best interest of the District and would be a benefit to the land and property included in the District, or, if there is any opposition to the proposed conversion, the Commission may refer the application to the State Office of Administrative Hearings for a contested case hearing on the application.

TCEQ Docket No. 2014-0559-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for conversion of Oak Point Water Control and Improvement District No. 2 of Denton County (District) to a Municipal Utility District (Application). The Application was filed with the TCEQ and included a certified copy of an order by the District's Board of Directors (Applicant). The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, August 20, 2014, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas.

The District contains approximately 55.68 acres of land within Denton County. The District's boundaries and properties currently excluded from the District are set forth in property descriptions available for public review upon request at either the District's office or at the TCEQ's office. A copy of the District's site map is available for public review upon request at either the District's office or at the TCEQ's office. The District was created as a water control and improvement district by the TCEQ on June 30, 2005, with the powers authorized by Texas Water Code §51.331, under Article XVI, Section 59 of the Texas Constitution with the authority to provide water service, dispose of waste and control storm water. The Applicant adopted and entered in its minutes an order in which the Applicant determined that conversion to a municipal utility district would serve the District's best interest and would be a benefit to land and property included in the District.

HEARING. As required by the Texas Water Code Chapter §54.032 and Title 30 of the Texas Administrative Code §293.15, the above hearing regarding this application will be held no earlier than 14 days after notice of this hearing is published in a newspaper with general circulation in the county or counties in which the District is located. The purpose of this hearing is to provide all interested persons the opportunity to appear and offer testimony for or against the proposal contained in the resolution.

At the hearing, pursuant to the Texas Water Code §54.033 the Commission will determine if converting the current district into a municipal utility district, that operates under Texas Water Code Chapter 54 would serve the best interest of the District and would be a benefit to the land and property included in the District, or, if there is any opposition to the proposed conversion, the Commission may refer the application to

the State Office of Administrative Hearings for a contested case hearing on the application.

**INFORMATION.** For information regarding the date and time this application will be heard before the Commission, please submit written inquiries to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or by phone at (512) 239-3300. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Creation Review Team at (512) 239-4691. General information regarding 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 (512) 239-0200.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD), at least one week prior to the hearing.

TRD-201402714

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 11, 2014



### Notice of District Petition

Notices issued June 3, 2014

TCEQ Internal Control No. D-03282014-027; Riverside Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Riverside Water Supply Corporation to Superior Water Works Special Utility District (District), and to transfer Certificate of Convenience and Necessity (CCN) No. 11033 from Riverside Water Supply Corporation to Superior Water Works Special Utility District. Superior Water Works Special Utility District's business address will be: P.O. Box 194 Riverside, Texas 77367. The petition was filed pursuant to Chapters 49 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Riverside Water Supply Corporation and the organization, creation and establishment of Superior Water Works Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 11033 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by Riverside Water Supply Corporation is to provide water supply for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. The nature of the services proposed to be provided by Superior Water Works Special Utility District is to provide water supply for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-201402713

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 11, 2014



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 21, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's

central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 21, 2014**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: CENTRAL FOODS, INC. d/b/a Pik Nik Foods 14; DOCKET NUMBER: 2013-1623-PST-E; TCEQ ID NUMBER: RN101739795; LOCATION: 930 Division Avenue, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release to the executive director within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substances within 30 days discovery; PENALTY: \$12,600; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Elegant Consolidated Group LLC d/b/a BIG B's SHELL; DOCKET NUMBER: 2013-0792-PST-E; TCEQ ID NUMBER: RN102250347; LOCATION: 400 State Highway 31 East, Trinidad, Henderson County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$3,251; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: HC OILFIELD SERVICES, LLC; DOCKET NUMBER: 2013-1274-MLM-E; TCEQ ID NUMBER: RN106698046; LOCATION: 4490 Farm-to-Market Road 117, Dilley, Frio County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to prohibit the burning of MSW for the purpose of disposal; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; and 30 TAC §324.4(1) and 40 Code of Federal Regulations §279.22(d), by failing to prevent the unauthorized disposal of used oil; PENALTY: \$8,069; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: KING FUELS, INC. d/b/a Pin Oak Shell; DOCKET NUMBER: 2013-1577-PST-E; TCEQ ID NUMBER: RN101880078; LOCATION: 1350 Pin Oak Road, Katy, Fort Bend County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$7,500; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Margarito Mendez; DOCKET NUMBER: 2013-1064-MSW-E; TCEQ ID NUMBER: RN106668684; LOCATION: 1911 and 1913 Goldsberry Street (Lot 1 and Lot 2 of Subdivision of Lot I-3, Lakeside Addition, City Block 56), Nacogdoches, Nacogdoches County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$1,250; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201402698

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 10, 2014



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 21, 2014**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 21, 2014**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Alberto Garza and Ruby Lee Garza; DOCKET NUMBER: 2013-2209-MLM-E; TCEQ ID NUMBER: RN106137359; LOCATION: 22414 West United States Highway 281, San Benito, Cameron County; TYPE OF FACILITY: farm; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §330.15(a)(1) and (c), and TCEQ Agreed Order Docket Number 2011-1405-MLM-E, Ordering Pro-

visions Numbers 2.a. and b., by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$76,500; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Dorothy A. Essex d/b/a Oak Hill Acres Mobile Home Subdivision; DOCKET NUMBER: 2013-2116-PWS-E; TCEQ ID NUMBER: RN101223865; LOCATION: 29042 Blueberry Drive, Boerne, Bexar County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A), by failing to submit Disinfectant Level Quarterly Operating Reports (DLQORs) to the executive director each quarter by the tenth day of the month following the end of the quarter and by failing to provide public notices of the failure to submit a DLQOR to the executive director; 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 July 1 of each year, and by failing to submit to the executive director by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §§290.106(e), 290.107(e), and 290.113(e), by failing to provide the results of annual nitrate, volatile organic chemical contaminants, and Stage 1 disinfectant by-product sampling to the executive director; PENALTY: \$2,495; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Eureka! Computer Scrap Recycler's L.L.C.; DOCKET NUMBER: 2013-1752-MSW-E; TCEQ ID NUMBER: RN106875099; LOCATION: 6791 State Highway 276, Royse City, Rockwall County; TYPE OF FACILITY: electronics recycling facility; RULES VIOLATED: 30 TAC §328.5(b) and §328.133(e)(1), by failing to provide a notice of intent to operate an electronics recycling facility to the executive director prior to commencement of new operations; 30 TAC §328.5(c), by failing to provide a written cost estimate showing the cost of hiring a third party to close the facility by disposition of all combustible processed and unprocessed materials stored outside at the facility; 30 TAC §328.5(h), by failing to make available to the local fire prevention authority having jurisdiction over the facility a copy of the Fire Prevention and Suppression Plan for review and coordination; 30 TAC §37.921 and §328.5(d), by failing to demonstrate financial assurance for closure, post closure, and corrective action for the facility; 30 TAC §328.4(b)(3)(A) and §328.5(f)(1), by failing to provide recycling records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §335.261(b) and 40 Code of Federal Regulations §§261.39(a)(2), 273.14(a), and 273.15(a), by failing to clearly label the used, broken cathodic ray tube containers with the words "used cathode ray tube(s)-contains leaded glass" or "leaded glass from televisions or computers" and "do not mix with other glass materials", by failing to label universal waste batteries containers with the words "universal waste-batteries", and by failing to demonstrate the length of time universal waste has been accumulated; PENALTY: \$43,988; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Greenwood Ventures, Inc.; DOCKET NUMBER: 2013-2006-PWS-E; TCEQ ID NUMBER: RN102689213; LOCATION: 10706 Farm-to-Market Road 307, Midland, Midland County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to

collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive sample and by failing to provide public notification of the failure to conduct triggered source monitoring; 30 TAC §290.122(b)(2)(A), by failing to provide public notifications regarding exceedances of the maximum contaminant level for arsenic and uranium; 30 TAC §290.106(e) and TCEQ DO Docket Number 2011-1073-PWS-E, Ordering Provisions Numbers 3.c.i and ii, by failing to provide the results of quarterly nitrate and arsenic sampling to the executive director; 30 TAC §290.122(c)(2)(A), by failing to provide public notifications regarding the failure to collect samples; and 30 TAC §290.110(e)(4)(A) and (f)(3) and TCEQ DO Docket Number 2011-1073-PWS-E, Ordering Provisions Numbers 3.a.i and e, by failing to submit a Disinfectant Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: \$2,025; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Midland Regional Office, 9900 W IH-20, Suite 100, Midland, Texas 79706-5406, (432) 570-1359.

(5) COMPANY: Israel Joel Daniels; DOCKET NUMBER: 2012-0702-AIR-E; TCEQ ID NUMBER: RN106343460; LOCATION: 2530 West Kingsley Road, Garland, Dallas County; TYPE OF FACILITY: certified conductor of vehicle safety and emissions certification inspections; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §114.50(d)(1) and (2), by failing to prevent the issuance of a vehicle inspection report when all applicable air pollution emissions control related requirements of the annual vehicle emissions and safety inspection requirements were not completely met; PENALTY: \$30,000; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201402699  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: June 10, 2014



#### Notice of Opportunity to Comment on Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in

the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 21, 2014**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of the proposed S/DO are available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 21, 2014**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: TEXAN SINGH, INC. d/b/a Dhillon's Gas & Food Mart; DOCKET NUMBER: 2013-1318-PST-E; TCEQ ID NUMBER: RN101817757; LOCATION: 3005 Calder Street, Beaumont, Jefferson County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201402697

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 10, 2014



### Notice of Water Quality Applications

The following notices were issued on May 30, 2014 through June 6, 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

CHEMICAL SPECIALTIES LLC which operates Mineral Research & Development, a facility that manufactures various grades of zinc chloride, zinc ammonium chloride, and zinc carbonate chemicals, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001878000, which authorizes the discharge of process effluent commingled with sanitary waste, utility wastewater, vacuum pump seal water, and first-flush stormwater at a daily average flow not to exceed 270,000 gallons per day via Outfall 001 and

stormwater on an intermittent and flow-variable basis via Outfall 002. The facility is located at 302 Midway Road, Freeport, Brazoria County, Texas 77542.

THE TEXAS MUNICIPAL POWER AGENCY has applied for a renewal of TPDES Permit No. WQ0002460000, which authorizes the discharge of stormwater from sedimentation ponds in mining areas on an intermittent and flow variable basis via Outfalls 001 and 008. The facility is located on Farm-to-Market Road 3090, 0.5 miles west of the intersection of Farm-to-Market Road 244 and Farm-to-Market Road 3090, near the community of Carlos, in Grimes County, Texas, 77830.

CITY OF BRENHAM has applied for a renewal of TPDES Permit No. WQ0010388001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,550,000 gallons per day. The current permit authorizes the marketing and distribution of Class A sewage sludge. The facility is located at 2005 Old Chappell Hill Road, approximately 3,300 feet southeast of the intersection of Farm-to-Market Road 577 and State Highway 105, south of and adjacent to Hog Branch in the City of Brenham in Washington County, Texas 77833.

CLEAN HARBORS DEER PARK LLC which operates Clean Harbors Deer Park, an industrial and hazardous waste treatment, storage, and disposal facility, has applied for a renewal of TPDES Permit No. WQ0001429000, which authorizes the discharge of treated industrial wastes, incinerator scrubber water, treated domestic wastewater, treated stormwater, and previously monitored effluent (from Outfalls 101 and 201) at a daily average flow not to exceed 2,880,000 gallons per day via Outfalls 001 and 004; and stormwater on an intermittent and flow-variable basis via Outfalls 002 and 003. The permittee has requested removal of Outfall 001 from the permit as the outfall is no longer used and has also requested to relocate Outfall 004 by approximately 100 feet due to construction of a new ship terminal facility; these requests have been granted in the draft permit. The facility is located 2027 Independence Parkway, south of Tidal Road, west of State Highway 134, and east of and adjacent to Tucker Bayou in the industrial zone of the City of Deer Park, Harris County, Texas 77571. 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.

TRS ENVIROGANICS INC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TCEQ Permit No. WQ0004463000, which authorizes the land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use. The current permit authorizes land application of wastewater treatment plant sewage sludge and water treatment plant sludge for beneficial use on 1,250 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sludge land application site is located approximately 1.25 miles west of the intersection of Farm-to-Market Road 2221 and Seven Mile Road, in Hidalgo County, Texas 78574.

TEXAS BARGE & BOAT INC which operates Texas Barge & Boat Freeport Facility, has for a renewal of TPDES Permit No. WQ0004696000, which authorizes the discharge of ballast and bilge water from marine vessels via Outfall 004 on an intermittent and flow-variable basis and ballast and bilge water from marine terminals, drydock water, and pressure wash water via Outfall 005 on an intermittent and flow-variable basis. The facility is located approximately 2.5 miles south of the intersection of State Highway 288 and County Road 242A, Brazoria County, Texas. 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.

TRS ENVIROGANICS INC has applied for a renewal of TCEQ Permit No. WQ0004861000, which authorizes the land application of wastewater treatment plant sludge and water treatment plant sludge for beneficial use. The current permit authorizes land application of wastewater treatment plant sludge and water treatment plant sludge for beneficial use on 655.14 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The sludge land application site is located approximately 1.25 miles west of the intersection of Farm-to-Market Road 2221 and Seven Mile Road in Hidalgo County, Texas 78574.

LINDE LLC which proposes to operate Linde Air Separation Unit, an air separation plant which will produce high pressure gaseous oxygen, gaseous nitrogen, liquid oxygen, liquid nitrogen, and liquid argon, has applied for new permit Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005108000 to authorize the discharge of process wastewater, cooling tower blowdown, filter backwash water, and utility wastewater at a daily average flow not to exceed 250,000 gallons per day via Outfall 001. The facility is located at 11603 Strang Road, southeast of the Linde Gas La Porte Syngas Plant, near the City of La Porte, Harris County, Texas 77571.

TENASKA ROANS PRAIRIE PARTNERS LLC which proposes to operate Tenaska Roan's Prairie Generating Station, has applied for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005111000 to authorize the discharge of evaporative cooler blowdown, previously monitored effluents (low volume waste sources, metal cleaning wastes, chemical metal cleaning wastes, water treatment wastes, stormwater) and uncontaminated air conditioner and compressor condensate at a volume not to exceed a daily average of 105,000 gallons per day. The facility is located on the south side of State Highway 30, approximately 2.5 miles southwest of the City of Shiro and approximately 1.1 miles east of the intersection of State Highway 30 and State Highway 90, Grimes County, Texas 77876.

CITY OF GANADO has applied for a renewal of TPDES Permit No. WQ0010010001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located at 900 Baker Street, Ganado, in Jackson County, Texas 77962.

CITY OF WEST COLUMBIA has applied for a renewal of TPDES Permit No. WQ0010312001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located at 813 Fourth Street, approximately 1.7 miles east of the intersection of State Highway 35 (Business) and State Highway 36 in Brazoria County, Texas 77486.

CITY OF CORPUS CHRISTI has applied for a renewal of TPDES Permit No. WQ0010401009, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 13409 Whitecap Boulevard at the west end of Whitecap Boulevard on Padre Island in the City of Corpus Christi in Nueces County, Texas 78418.

CITY OF BISHOP has applied for a renewal of TPDES Permit No. WQ0010427001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility is located approximately 1.25 miles south of the intersection of U.S. Highway 77 and 6th Street, west of U.S. Highway 77 and adjacent to Carreta Creek in Nueces County, Texas 78343.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495146, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,000,000 gallons

per day. The current permit authorizes the distribution and marketing of sludge. The facility is located at 3928 Kingwood Drive, Kingwood, north of the West Fork Arm of Lake Houston, approximately 4.5 miles east of U.S. Highway 59 between Bear Branch and Ben's Branch, approximately 7.75 miles northeast of the intersection of U.S. Highway 59 and Farm-to-Market Road 1960 in Harris County, Texas 77339.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT FONDREN ROAD has applied for a renewal of TPDES Permit No. WQ0010570001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located at 15203 East Hampton Circle, Houston, in Harris County, Texas 77071.

CITY OF PHARR has applied for a renewal of TPDES Permit No. WQ0010596001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The facility is located at 2400 South Veterans Boulevard, adjacent to South "I" Road, approximately 1.9 miles south of the intersection of South "I" Road and U.S. Highway 83 Business in Hidalgo County, Texas 78577.

TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES has applied for a renewal of TCEQ Permit No. WQ0010634001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 133,000 gallons per day via surface irrigation of 35 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 16 miles northwest of the City of San Angelo on U.S. Highway 87 in Tom Green County, Texas 76934.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of TCEQ Permit No. WQ0011189001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via surface irrigation of 1.85 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in Lake Brownwood State Park, approximately 0.1 mile north of Park Road 15 and 0.3 mile east of Park Headquarters in Brown County, Texas 76801.

PECAN GROVE MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011655001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,900,000 gallons per day. The facility is located at 1600 Farm-to-Market Road 359, Richmond, approximately 1.5 miles north of U.S. Highway 90A and approximately 500 feet east of Farm-to-Market Road 359 in Fort Bend County, Texas 77406.

US ARMY CORPS OF ENGINEERS has applied for a renewal of TCEQ Permit No. WQ0012090001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 95 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located near the Granger Lake Project Office adjacent to Farm-to-Market Road 971 at the north end of Granger Dam at a point approximately 8 miles east of the intersection of State Highway 95 and Farm-to-Market Road 971 in Williamson County, Texas 76530.

CONROE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012204001, 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 14796 Highway 105 East, Conroe, on the grounds of Stephen F. Austin Elementary School in Montgomery County, Texas 77306.

QUADVEST LP has applied for a major amendment to TPDES Permit No. WQ0014711001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 320,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located at 40905 Community Road, Magnolia, approximately 4,000 feet north-northeast of the intersection of Farm-to-Market Road 1488 and Community Road in Montgomery County, Texas 77354.

WHITHARRAL WATER AND SEWER SERVICE SUPPLY Corporation has applied for a renewal of TCEQ Permit No. WQ0014942001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via surface irrigation of 26 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 2,400 feet east of U.S. Highway 385 and 2,400 feet south of First Street in the Town of Whitharral in Hockley County, Texas 79380.

RANCHO DEL LAGO INC has applied for a new permit, Proposed TCEQ Permit No. WQ0015051001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 86.54 acres of public access (golf course) land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located at the southwest corner at the intersection of South Calvin Barrett and Nat Nolan in Blanco County, Texas 78133.

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-201402711

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 11, 2014



## Notice of Water Rights Application

Notice issued June 4, 2014.

APPLICATION NO. 13077; voestalpine Texas LLC, 800 N Shoreline Blvd., Suite 1600 S, Corpus Christi, Texas 78401, Applicant, has applied for a Water Use Permit to authorize diversion of 33,627 acre-feet of water per year from a point on Corpus Christi Bay, San Antonio-Nueces Coastal Basin for industrial purposes in Nueces County, Texas. voestalpine Texas LLC seeks a Water Use Permit to divert 33,627 acre-feet of water per year from Corpus Christi Bay, San Antonio-Nueces Coastal Basin, at a maximum diversion rate of 46.42 cfs (20,833 gpm), for industrial purposes in Nueces County, Texas. The applicant indicates the diversion points are not within a Zip Code designation; however, the surrounding area is defined by Zip Code 78374. The proposed diversion point will be located approximately 2.6 miles east of the nearby town of Portland, Texas at Latitude 27.880414° N, Longitude 97.277407° W, also bearing 262.08°, 2,396 feet from the southeast corner of the T.T. Williams Original Survey, Abstract No. 288 in San Patricio County. The application and fees were received on August 23, 2013. Additional information and fees were received on October 28 and November 8, 2013. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 13, 2013. The remaining fees were obtained on March 27, 2014 and additional information was received on April 25 and 26,

2014. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to install a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the San Antonio-Nueces Coastal Basin, and allow representatives of the TCEQ South Texas Watermaster reasonable access to the property to inspect the measuring device. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

## INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding 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-201402712

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 11, 2014



## Texas Ethics Commission

### List of Late Filers

Listed below is the name of a filer from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in

reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

**Deadline: Semiannual Report due January 15, 2014 for Committees**

Philip Harris, Texas Republican Coalition, 2140 E. Southlake Blvd., Ste. L-655, Southlake, Texas 76092

TRD-201402665

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Filed: June 9, 2014

◆ ◆ ◆  
**Texas Facilities Commission**

**Request for Proposals #303-5-20454**

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts (CPA), announces the issuance of Request for Proposals (RFP) #303-5-20454. TFC seeks a five (5) or ten (10) year lease of approximately 2,297 square feet of office space in McAllen, Hidalgo County, Texas.

The deadline for questions is June 30, 2014 and the deadline for proposals is July 11, 2014 at 3:00 p.m. The award date is August 20, 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=111887](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=111887).

TRD-201402667

Kay Molina

General Counsel

Texas Facilities Commission

Filed: June 9, 2014

◆ ◆ ◆  
**General Land Office**

**Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program**

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 7, 2014 through June 2, 2014. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 13, 2014. The public comment period for this project will close at 5:00 p.m. on Sunday, July 13, 2014.

FEDERAL AGENCY ACTIONS:

**Applicant: EMAS AMC;** Location: The project is located in Corpus Christi Bay on the east side of the La Quinta Channel between Oxy-Chemical and Kiewitt Offshore Services, Ltd., in Ingleside, San Patricio County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Ingleside, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.865547 North; Longitude: 97.24222 West. Project Description: The applicant proposes to amend his permit to increase authorized dredged depths from -30 feet MLT to -37.7 feet MLT (plus an additional 2 feet of advanced maintenance) using mechanical and hydraulic methods, widen the vessel approach by dredging 0.89 acre of unvegetated bay bottom in addition to the 10.63 acres dredged under previous authorization, and extend the expiration date to complete all previously authorized work, including construction of mooring structures, and the optional installation of a stone-filled marine mattress on 2.3 acres of dredged area for side slope protection. The applicant also proposes to install approximately 900 linear feet of steel sheet pile toe wall to support an existing bulkhead and construct an additional mooring structure that would be 29 feet long by 18 feet wide and elevated to a height of 13 feet above the water. Dredged material will be placed in uplands on the applicant's property in a previously authorized confined dredged material placement area. CMP Project No: 14-1760-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00201. 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: CCI Corpus Christi LLC;** Location: The project is located on the north side of the Tule Lake Channel, approximately 4.25 miles WNW of the Harbor Bridge, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: CORPUS CHRISTI, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.82623 North; Longitude: 97.48413 West. Project Description: The applicant proposes to construct and operate a new condensate splitter facility which includes a bulk petroleum terminal. The condensate splitter facility would be constructed on an 82-acre tract of land and would also include two ship docks and one barge dock located on the Tule Lake Channel of the Corpus Christi Ship Channel (CCSC) for condensate shipment receipt and product loading. The project will result in the fill of approximately 31 acres of high marsh wetlands for the development of the condensate splitter. An additional 3 acres of emergent wetlands along the shoreline will be filled for the construction of docks. CMP Project No: 14-1761-F1. Type of Application: U.S.A.C.E. permit application #SWG-2009-00991. 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.

**Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).**

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](mailto:federal.consistency@glo.texas.gov). Comments should be sent to Mr. Newby at the above address or by email.

TRD-201402726



Larry L. Laine  
Chief Clerk/Deputy Land Commissioner  
General Land Office  
Filed: June 11, 2014

◆ ◆ ◆  
**Texas Health and Human Services Commission**

**Public Notice**

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-014 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to establish the Home and Community-based Services - Adult Mental Health (HCBS-AMH) program under the authority of Section 1915(i) of the Social Security Act. The proposed amendment is effective October 1, 2014.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$3,269,689 for federal fiscal year (FFY) 2015, consisting of \$1,713,552 in federal funds and \$1,556,137 in state general revenue. For FFY 2016, the estimated additional annual expenditure is \$7,085,761, consisting of \$3,888,187 in federal funds and \$3,197,574 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Marcus Denton, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 730-7413; by facsimile at (512) 730-7472; or by e-mail at marcus.denton@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201402671  
Jack Stick  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: June 9, 2014

◆ ◆ ◆  
**Texas Higher Education Coordinating Board**

**Notice of Intent to Engage in Negotiated Rulemaking B-On-Time (Tuition Set-Asides) (Public Universities and Health-Related Institutions Offering Baccalaureate Degrees)**

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to develop rules for the allocation methodology for the B-On-Time student loan program; specifically, the tuition set-asides portion of the appropriated funds that are used to originate loans for students enrolled at public universities and health-related institutions offering baccalaureate degrees. The rules will also address 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 and financial aid directors of public universities and health-related institutions that offer baccalaureate degrees soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 23 individuals responded (out of approximately 48 affected entities) and expressed an interest to participate or nominated

someone from their institution to participate on the negotiated rulemaking committee for B-On-Time (Tuition Set-Asides). The positions held by the volunteers and nominees include Presidents, Vice Presidents, and Directors. 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 B-On-Time (Tuition Set-Asides):

- 1) Public Universities (general academic teaching institutions other than public state colleges);
- 2) Public Health-Related Institutions that offer baccalaureate degrees; and
- 3) The Texas Higher Education Coordinating Board

The THECB proposes to appoint the following 21 individuals to the negotiating rulemaking committee for B-On-Time (Tuition Set-Asides) to represent affected parties and the agency:

**Public Universities**

- William Bloom, Director of Financial Aid, Angelo State University  
Carlos Hernandez, Acting Vice President for Finance and Operations, Sam Houston State University  
Kathy Purvis, Executive Director of Student Financial Assistance Services, Tarleton State University  
Gina D. Gonzalez, Associate Vice President for Student Success, Texas A&M International University  
Delisa F. Falks, Executive Director, Scholarships and Financial Aid, Texas A&M University  
Maria Ramos, Director of Financial Aid and Scholarships, Texas A&M University-Commerce  
Margaret Dechant, Associate Vice President for Enrollment Management, Texas A&M University-Corpus Christi  
Manuel Lujan, Vice President for Enrollment Management, Texas A&M University-Kingsville  
Emily Cutrer, President, Texas A&M University-Texarkana  
Linda Ballard, Director of Financial Aid, Texas Southern University  
Christopher D. Murr, Director of Financial Aid and Scholarships, Texas State University  
Thomas Melecki, Director of Student Financial Services, The University of Texas at Austin  
M. Beth Tolan, Director of Financial Aid, The University of Texas at Dallas  
Ron Williams, Interim Director of Financial Aid, The University of Texas at El Paso  
Lisa Blazer, Associate Vice President for Student Affairs, The University of Texas at San Antonio  
Elaine Rivera, Director of Financial Aid, The University of Texas-Pan American  
Maureen Croft, Interim Associate Provost for Strategic Enrollment Planning, University of Houston

Carolyn Mallory, Director of Financial Aid, University of Houston-Victoria

Scott Lapinski, Director of Financial Aid, University of North Texas-Dallas

Public Health-Related Institutions (Offering Baccalaureate Degrees)

Lisa D. Cain, Director of Medical School Enrichment Programs, The University of Texas Medical Branch-Galveston

Texas Higher Education Coordinating Board

Lesla Moller, Interim Assistant Commissioner for State Financial Aid Programs

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 B-On-Time (Tuition Set-Asides). Comments and applications for membership of the committee must be submitted by June 30, 2014, to: Linda Battles, Associate Commissioner/Chief of Staff, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Linda.Battles@theccb.state.tx.us.

TRD-201402718

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: June 11, 2014

◆ ◆ ◆

## Texas Department of Housing and Community Affairs

Notice of Public Hearings for the Low Income Home Energy Assistance Program State Application and Plan for Fiscal Year 2015

For the 2015 Federal Fiscal Year (FFY) beginning October 1, 2014, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of programs that assist very low-income Texans with home energy. In the process of deciding how to use Low-Income Home Energy Assistance Program (LIHEAP) funds, TDHCA solicits public input on the details of the plan.

As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of TDHCA has posted the proposed plan on the TDHCA website and will conduct a public hearing. Primarily, the hearing solicits comments on the proposed use and distribution of FFY 2015 funds provided under LIHEAP.

LIHEAP provides funding for the Comprehensive Energy Assistance Program (CEAP) and the Weatherization Assistance Program (WAP).

The public hearing has been scheduled as follows:

Thursday, July 10, 2014, 11:00 a.m. Central Daylight Time

Texas Department of Housing and Community Affairs

221 East 11th Street, Room 116

Austin, Texas 78701

The LIHEAP State Application and Plan for Fiscal Year 2015 DRAFT is available at <http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm>.

A representative from TDHCA will explain the planning process and receive comments from stakeholders and the general public regarding the proposed plan for LIHEAP. A copy of the Draft LIHEAP Plan may be obtained after June 20, 2014, through TDHCA's web site, <http://www.tdhca.state.tx.us/community-affairs/contacts.htm> or by contacting the Texas Department of Housing and Community Affairs, Community Affairs Division in writing at P.O. Box 13941, Austin, Texas 78711-3941, or by phone at (512) 475-1435.

Anyone may submit comments on the draft plan in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than 5:00 p.m. Central Daylight Time, Monday, July 21, 2014. Comments concerning the draft plan may be submitted via email to [sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us), by fax at (512) 475-3935, or by mail to the Texas Department of Housing and Community Affairs, Community Affairs Division, Attention: Sharon Gamble, at TDHCA, P.O. Box 13941, Austin, Texas 78711-3941. If you have questions regarding the public hearing process or any of the programs referenced above, please contact TDHCA, Community Affairs Division.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, (512) 475-4577, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201402716

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 11, 2014

◆ ◆ ◆

## Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by LIGHTHOUSE PROPERTY INSURANCE CORPORATION, a foreign fire and/or casualty company. The home office is in Baton Rouge, Louisiana.

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-201402703

◆ ◆ ◆  
**Texas Lottery Commission**

Instant Game Number 1592 "Fun 5's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1592 is "FUN 5'S". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1592 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1592.

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 for Games 1, 2, 3, 4 and 5 are: 5 SYMBOL, \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$75.00, \$100, \$500, \$1,000 and \$100,000. Additional possible black Play Symbols for Games 1 and 5 are: 1, 2, 3, 4, 6, 7, 8 and 9. Additional possible black Play Symbols for Games 3, 4 and 5 are: DIAMOND SYMBOL, STAR SYMBOL and HORSESHOE SYMBOL. Additional possible black Play Symbols for Games 3 and 4 are: LEMON SYMBOL, POT OF GOLD SYMBOL, GRAPES SYMBOL, APPLE SYMBOL, WATERMELON SYMBOL, COIN SYMBOL, ORANGE SYMBOL and CLOVER SYMBOL. An additional possible black Play Symbol for Game 4 is: RAINBOW SYMBOL. Additional possible black Play Symbols for Game 5 are: MOON SYMBOL, PEACE SIGN SYMBOL and MONEY BAG 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. 1592 - 1.2D

PLAY SYMBOLS FOR GAMES 1, 2, 3, 4 AND 5	CAPTIONS
5 SYMBOL	FIV
\$5.00	FIVES
\$10.00	TEN\$
\$15.00	FIFTN
\$25.00	TWY FIV
\$50.00	FIFTY
\$75.00	SEVENTY FIV
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$100,000	HUN THOU

PLAY SYMBOLS FOR GAMES 1 AND 5	CAPTIONS
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN

PLAY SYMBOLS FOR GAMES 3, 4 AND 5	CAPTIONS
DIAMOND SYMBOL	DIAMOND
STAR SYMBOL	STAR (GAMES 3 AND 5)
STAR SYMBOL	WINX5 (GAME 4)
HORSESHOE SYMBOL	SHOE

PLAY SYMBOLS FOR GAMES 3 AND 4	CAPTIONS
LEMON SYMBOL	LEMON
POT OF GOLD SYMBOL	POTOGLD
GRAPES SYMBOL	GRAPES
APPLE SYMBOL	APPLE
WATERMELON SYMBOL	WTRMLN
COIN SYMBOL	COIN
ORANGE SYMBOL	ORANGE
CLOVER SYMBOL	CLOVER

PLAY SYMBOL FOR GAME 4	CAPTION
RAINBOW SYMBOL	RAINBOW

PLAY SYMBOLS FOR GAME 5	CAPTIONS
MOON SYMBOL	MOON
PEACE SIGN SYMBOL	PEACE
MONEY BAG SYMBOL	WINX5

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$15.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$75.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1592), 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: 1592-0000001-001.

K. Pack - A Pack of "FUN 5'S" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). 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 "FUN 5'S" Instant Game No. 1592 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "FUN 5'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 52 (fifty-two) Play Symbols. GAME 1: If a player reveals two "5" Play Symbols, the player wins the PRIZE. If a player reveals three "5" Play Symbols, the player wins 5 times the PRIZE. GAME 2: If a player reveals three matching prize amounts Play Symbols, the player wins that amount. If a player reveals two matching prize amounts Play Symbols and a "5" Play Symbol, the player wins 5 times that amount. GAME 3: If a player reveals a "5" Play Symbol, the player wins the PRIZE for that symbol. GAME 4: If a player reveals three "5" Play Symbols in any one ROW across,

the player wins the PRIZE for that ROW. If a player reveals two "5" Play Symbols and a "STAR" Play Symbol in any one ROW across, the player wins 5 times the PRIZE for that ROW. GAME 5: If a player reveals three "5" Play Symbols in any one row, column or diagonal, the player wins the PRIZE in the PRIZE box. If a player reveals a "MONEY BAG Play Symbol in the 5X BOX, the player wins 5 times that PRIZE. 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 52 (fifty-two) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 52 (fifty-two) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 52 (fifty-two) Play Symbols must be exactly one of those described in §1.2.C of these Game Procedures;

17. Each of the 52 (fifty-two) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

### GENERAL:

A. Players can win up to thirteen (13) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

### GAME 1:

D. No Ticket will ever contain more than two (2) matching Play Symbols (with the exception of the "5" Play Symbol).

E. No Ticket will contain more than three (3) "5" Play Symbols.

### GAME 2:

F. A winning combination will never contain more than three (3) matching Prize Symbols.

G. A winning combination will never contain more than one (1) set of three (3) matching Prize Symbols.

H. A winning combination with three (3) matching Prize Symbols will never contain a "5" Play Symbol.

I. Winning combinations that contain a "5" Play Symbol will never have more than one pair of matching prize amount Play Symbols.

J. No winning combination will contain more than one (1) "5" Play Symbol.

### GAME 3:

K. The "5" Play Symbol will only appear on winning Tickets as dictated by the prize structure.

L. The "5" Play Symbol will be evenly distributed unless restricted by other parameters, play action or prize structure.

M. Non-winning Play Symbols will not appear more than one (1) time.

N. Non-winning Prize Symbols will all be different.

O. Non-winning Prize Symbols will not match winning Prize Symbols.

### GAME 4:

P. There will be no occurrence of three (3) matching adjacent non-winning Play Symbols vertically or diagonally except when otherwise restricted by other parameters, play action or prize structure.

Q. Non-winning Prize Symbols will all be different.

R. Non-winning Prize Symbol(s) will not match winning Prize Symbol(s).

### GAME 5:

S. Non-winning combinations will contain two (2) "5" Play Symbols in at least one (1) row, column or diagonal.

T. Non-winning combinations will contain at least four (4) "5" Play Symbols, at least one (1) of which is in the top horizontal row.

U. As dictated by the prize structure, the "MONEY BAG" Play Symbol will appear in the 5X Box when the player has won by getting three (3) "5" Play Symbols in a single row, column, or diagonal line.

V. Winning combinations will have only one occurrence of three (3) "5" Play Symbols in any row, column, or diagonal.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "FUN 5'S" Instant Game prize of \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$75.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$75.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FUN 5'S" Instant Game prize of \$1,000 or \$100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FUN 5'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not

responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

- a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
- b. in default on a loan made under Chapter 52, Education Code; or
- c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "FUN 5'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "FUN 5'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 16,200,000 Tickets in the Instant Game No. 1592. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1592 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,944,000	8.33
\$10	1,080,000	15.00
\$15	648,000	25.00
\$25	380,025	42.63
\$50	216,000	75.00
\$75	17,550	923.08
\$100	10,800	1,500.00
\$500	810	20,000.00
\$1,000	135	120,000.00
\$100,000	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 3.77. 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. 1592 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. 1592, 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-201402645

Bob Biard

General Counsel

Texas Lottery Commission

Filed: June 6, 2014



### Instant Game Number 1615 "Cowboys"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1615 is "COWBOYS". The play style is "key number match".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1615 shall be \$5.00 per Ticket.

#### 1.2 Definitions in Instant Game No. 1615.

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: 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, FOOTBALL SYMBOL, TD SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$1,000, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1615 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX

47	FRSV
48	FRET
49	FRNI
50	FFTY
FOOTBALL SYMBOL	FOOTBL
TD SYMBOL	WINALL
\$5.00	FIVES\$
\$10.00	TENS\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$100,000	100 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1615), 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: 1615-0000001-001.

K. Pack - A Pack of "COWBOYS" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "COWBOYS" Instant Game No. 1615 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 "COWBOYS" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-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 "FOOTBALL" Play Symbol, the player wins the prize for that symbol. If the player reveals a "TD" Play Symbol, the player WINS ALL 20 PRIZES instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-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 45 (forty-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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-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 Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$100,000, \$5,000 and \$1,000 will each appear at least once, except on Tickets winning eleven (11) times or more.

E. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No duplicate WINNING NUMBERS Play Symbols will appear on a Ticket.

I. The "TD" (win all) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "TD" (win all) Play Symbol will instantly win all twenty (20) prizes and will win only as per the prize structure.

K. The "TD" (win all) Play Symbol will never appear more than once on a Ticket.

L. The "TD" (win all) Play Symbol will never appear on a Non-Winning Ticket.

M. On Tickets winning with the "TD" (win all) Play Symbol, no YOUR NUMBERS Play Symbols will match any of the WINNING NUMBERS Play Symbols.

N. The "FOOTBALL" (auto win) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "FOOTBALL" (auto win) Play Symbol will automatically win the prize amount directly below the "FOOTBALL" (auto win) Play Symbol on a Ticket.

P. The "FOOTBALL" (auto win) Play Symbol will never appear more than once on a Ticket.

Q. The "FOOTBALL" (auto win) Play Symbol will never appear on a Non-Winning Ticket.

R. The "TD" (win all) Play Symbol and the "FOOTBALL" (auto win) Play Symbol will never appear on the same Ticket.

S. On Tickets winning with the "FOOTBALL" (auto win) Play Symbol, no YOUR NUMBERS Play Symbols will match any of the WINNING NUMBERS Play Symbols.

T. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and \$5, 10 and \$10, 15 and \$15, 20 and \$20, 50 and \$50).

U. On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.

V. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "COWBOYS" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COWBOYS" Instant Game prize of \$1,000, \$5,000 or \$100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service

(IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COWBOYS" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

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 "COWBOYS"

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 "COWBOYS" 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.

2.9 Promotional Second-Chance Drawings. Any non-winning "COWBOYS" Instant Game scratch-off Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Ticket for information on eligibility and entry requirements.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,720,000 Tickets in the Instant Game No. 1615. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1615 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,468,800	6.62
\$10	907,200	10.71
\$20	345,600	28.13
\$50	59,940	162.16
\$100	14,202	684.41
\$1,000	533	18,236.40
\$5,000	54	180,000.00
\$100,000	12	810,000.00

\*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 3.48. 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. 1615 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. 1615, 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-201402646  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: June 6, 2014



Instant Game Number 1646 "Hot 'n Spicy Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1646 is "HOT 'N SPICY TRIPLER". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1646 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1646.

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, FLAME SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$1,000 and \$25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1646 - 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
FLAME SYMBOL	TRIPLE
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU
\$25,000	25 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the

Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$1,000 or \$25,000.

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 (1646), 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: 1646-0000001-001.

K. Pack - A Pack of "HOT 'N SPICY TRIPLER" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT 'N SPICY TRIPLER" Instant Game No. 1646 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 "HOT 'N SPICY TRIPLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 23 (twenty-three) 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 "FLAME" Play Symbol, the player wins TRIPLE 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 23 (twenty-three) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, 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 23 (twenty-three) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. The "FLAME" (tripler) Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "FLAME" (tripler) Play Symbol will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never appear more than two (2) times.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "HOT 'N SPICY TRIPLER" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00 or \$200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "HOT 'N SPICY TRIPLER" Instant Game prize of \$1,000 or \$25,000, 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 "HOT 'N SPICY TRIPLER" 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 "HOT 'N SPICY TRIPLER" 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 "HOT 'N SPICY TRIPLER" 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 9,120,000 Tickets in the Instant Game No. 1646. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1646 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	875,520	10.42
\$4	802,560	11.36
\$5	218,880	41.67
\$10	109,440	83.33
\$20	72,960	125.00
\$50	42,446	214.86
\$200	3,800	2,400.00
\$1,000	114	80,000.00
\$25,000	10	912,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1646 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. 1646, 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-201402670  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: June 9, 2014



Instant Game Number 1648 "Loteria™"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1648 is "LOTERIA™". The play style is "row/column".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1648 shall be \$3.00 per Ticket.

1.2 Definitions in Instant Game No. 1648.

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. 1648 - 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 (1648), 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: 1648-0000001-001.

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. 1648 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 simbolos. El jugador raspa solamente los simbolos en la CARTA de LOTERIA™ que son iguales a los simbolos revelados en las CARTAS DEL GRITON para revelar un frijol. El jugador revela 4 frijoles en cualquier linea completa horizontal o vertical en la CARTA de LOTERIA™ para ganar el premio para esa linea. 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 Texas Lottery Instant 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. 1648. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1648 - 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. 1648 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. 1648, 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-201402647  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: June 6, 2014



Instant Game Number 1653 "\$100,000 Merry Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1653 is "\$100,000 MERRY MONEY". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1653 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1653.

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, 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, TREE SYMBOL, 5X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1653 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
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
TREE SYMBOL	WIN
5X SYMBOL	WINX5
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1653), 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: 1653-0000001-001.

K. Pack - A Pack of "\$100,000 MERRY MONEY" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded 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 "\$100,000 MERRY MONEY" Instant Game No. 1653 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 "\$100,000 MERRY MONEY" Instant Game is determined once the latex on the Ticket is scratched off to expose 35 (thirty-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 "TREE" Play Symbol, the player wins the prize for that symbol. If a player reveals a "5X" Play Symbol, the player wins 5 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 35 (thirty-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 35 (thirty-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 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 35 (thirty-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 Texas Lottery Instant 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 fifteen (15) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted.

D. Each Ticket will have five (5) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "TREE" (auto win) Play Symbol and "5X" Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "5X" Play Symbol will appear as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 10 and \$10).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$100,000 MERRY MONEY" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$100,000 MERRY MONEY" Instant Game prize of \$1,000 or \$100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$100,000 MERRY MONEY" 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 "\$100,000 MERRY MONEY" 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 "\$100,000 MERRY MONEY" 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 8,520,000 Tickets in the Instant Game No. 1653. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1653 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,136,000	7.50
\$10	1,079,200	7.89
\$20	227,200	37.50
\$50	102,524	83.10
\$100	14,200	600.00
\$500	994	8,571.43
\$1,000	110	77,454.55
\$100,000	8	1,065,000.00

\*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 3.33. 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. 1653 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. 1653, 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-201402648  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: June 6, 2014

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application to Amend Certificated Service Area Boundaries**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 30, 2014, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of Public Utilities Board of the City of Brownsville to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County. Docket Number 42568.

The Application: Public Utilities Board of the City of Brownsville (BPUB) filed an application for a service area boundary change to allow BPUB to provide service to a specific customer located within the certificated service area of American Electric Power Company (AEP). AEP does not contest or oppose the proposed change.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than July 27, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 42568.

TRD-201402638  
 Adriana A. Gonzales  
 Rules Coordinator  
 Public Utility Commission of Texas  
 Filed: June 5, 2014

◆ ◆ ◆  
**Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 4, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Taylor Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 42584.

The Application: Taylor Telephone Cooperative, Inc. (Taylor or Applicant) filed an application with the commission for revisions to its Residential and Business Local Exchange Access Line Service rates. Taylor proposed an effective date of July 1, 2014. The estimated revenue increase to be recognized by the Applicant is \$125,232.00 in gross annual intrastate revenues. The Applicant has 5,214 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by July 27, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, by phone at (512) 936-7120, or toll-free at (888) 782-8477 no later than July 27, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All correspondence should refer to Tariff Control Number 42584.

TRD-201402641  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 5, 2014

◆   ◆   ◆

## Supreme Court of Texas

### IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9113

#### ORDER ADOPTING AMENDMENTS TO THE RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

**ORDERED** that:

1. The Supreme Court of Texas amends Rules I, II, III, XIII, XIV, XVII, and XIX of the Rules Governing Admission to the Bar of Texas, effective October 1, 2014.
2. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.
3. These amendments may be changed in response to public comments received before September 1, 2014. Any interested party may submit written comments to Rules Attorney Martha Newton at [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov).

Dated: June 9, 2014.

\_\_\_\_\_  
Nathan L. Hecht, Chief Justice

\_\_\_\_\_  
Paul W. Green, Justice

\_\_\_\_\_  
Phil Johnson, Justice

\_\_\_\_\_  
Don R. Willett, Justice

\_\_\_\_\_  
Eva M. Guzman, Justice

\_\_\_\_\_  
Debra H. Lehmann, Justice

\_\_\_\_\_  
Jeffrey S. Boyd, Justice

\_\_\_\_\_  
John P. Devine, Justice

\_\_\_\_\_  
Jeffrey V. Brown, Justice

Amendments to Rule I, Rules Governing Admission to the Bar of Texas

#### Rule I

##### Definitions and General Provisions

(a) Frequently used terms are defined as follows:

(1) "Accredited" means that a law school is recognized as being qualified by the competent accrediting agency of a state or foreign jurisdiction, by a political subdivision of a state or foreign jurisdiction, or by another authorized body of a state or foreign jurisdiction.

(2) "Applicant" shall mean a person who files with the Board any Application or Re-application to take the Texas Bar Examination, to be admitted without examination, or for Certification as a Foreign Legal Consultant.

(3) "Application" shall mean an Application or Re-application to take the Texas Bar Examination, to be admitted without examination to the Texas Bar, or for Certification as a Foreign Legal Consultant.

(4) "Approved law school" shall mean a law school approved by the American Bar Association.

(5) "Authorized to practice law" means that the Applicant has achieved the ability to engage in activities that would be recognized in the United States as the practice of law.

(6) "Board" shall mean the Board of Law Examiners.

(7) "Chemical dependency" shall mean substance abuse or dependency as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual DSM-IV-TR and any subsequent revisions thereof.

(8) "Controlled substance" shall have the meaning assigned by Section 462.001, Health and Safety Code.

(9) "Declarant" shall mean a person who files with the Board a Declaration of Intention to Study Law.

(10) "Declaration" shall mean a Declaration of Intention to Study Law.

(11) "Practice of law" includes:

(A) private practice as a sole practitioner or for a law firm, legal services office, legal clinic, public agency, or similar entity;

(B) practice as an attorney for an individual or for a corporation, partnership, trust, or other entity with the primary duties of furnishing legal counsel and advice; drafting and interpreting legal documents and pleadings; interpreting and giving advice regarding the law; or preparing, trying, or presenting cases before courts, departments of government, or administrative agencies;

(C) practice as an attorney for a local government or the state or federal government, with the same primary duties described in the preceding subsection;

(D) employment as a judge, magistrate, referee, or similar official for a local government or the state or federal government, provided that the employment is open only to licensed attorneys;

(E) employment as a full-time teacher of law at an approved law school;

(F) any combination of the preceding categories.

(912) "State" shall mean any state or territory of the United States, as well as the District of Columbia.

(103) "Supreme Court" shall mean the Supreme Court of Texas.

(114) "Texas Bar Examination" shall mean the full bar examination.

(125) "Treatment" shall have the meaning assigned by Section 462.001, Texas Health and Safety Code.

(136) "Treatment facility" shall have the meaning assigned by Section 462.001, Texas Health and Safety Code.

(14) "Valid law license" shall mean, unless otherwise specified in written policy adopted by the Board, an active law license under which the licensee, at all times during the period of practice for which credit is sought and at the time of filing a Texas application, has been entitled to engage lawfully in the practice of law in the jurisdiction which issued the license.

(b) The terms "admitted," "admitted to the Bar," "admitted to the Texas Bar," "licensed," and "licensed to practice law in Texas" are used interchangeably in these Rules.

(c) If any completed document required to be filed hereunder by these Rules is placed, along with all required fees, in a postpaid envelope properly addressed to the Board and then deposited in a post office or official depository under the care and custody of the United States Postal Service, such the document shall will be deemed timely filed if the envelope bears a legible U.S. Postal Service postmark which that is dated on or before the applicable deadline date.

(d) The Board shall must not disclose to any third party any information obtained with respect to the character or fitness of any Applicant, Declarant, or probationary licensee, except:

(1) upon written authority of such Applicant or Declarant, or probationary licensee;

(2) in response to a valid subpoena from a court of competent jurisdiction; or

(3) to the Office of the Chief Disciplinary Counsel of the State Bar of Texas or to the Texas Unauthorized Practice of Law Committee.

Amendments to Rule II, Rules Governing Admission to the Bar of Texas

## Rule II

### General Eligibility Requirements for

### Admission to the Texas Bar

(a) To be eligible for admission or reinstatement as a licensed attorney in Texas, the an Applicant shall:

(1) comply with all applicable requirements of these Rules;

(2) be at least eighteen (18) years of age;

(3) be of present good moral character and fitness;

(4) have completed the law study required under these Rules, unless specifically exempted under the terms of Rule XIII;

(5) qualify under one of the following categories:

(A) be a United States citizen;

(B) be a United States National;

(C) be an alien lawfully admitted for permanent residence;

(D) be an alien otherwise authorized to work lawfully in the United States;

(6) have satisfactorily completed the Texas Bar Examination, unless exempted from the Bar Examination under Rule XIII (but in no event shall an Applicant for reinstatement be so exempted);

(7) have satisfactorily completed the Multistate Professional Responsibility Examination;

(8) be willing to take the oath required of attorneys in Texas;

(9) pay the appropriate licensing fee to the Clerk of the Supreme Court of Texas; and

(10) enroll in the State Bar of Texas by filing an enrollment form and paying the appropriate fees and assessments due within the time specified in Article III, Sec. 2(A) of the State Bar Rules.

(b) If an Applicant has not satisfied all requirements for admission to the Texas Bar within two years from the date that the Applicant is notified that (s)he the Applicant has passed all parts of the Texas Bar Examination, the Applicant's examination scores shall be void; provided, however, that the Board may waive this provision for good cause shown.

Amendments to Rule III, Rules Governing Admission to the Bar of Texas

## Rule III

### Law Study Requirement

(a) The law study requirement for eligibility of an Applicant to take the Texas Bar Examination, unless otherwise provided by these Rules, is met by:

(1) graduation with a J.D. degree or its equivalent from an approved law school;

(2) satisfaction of all requirements for graduation from an approved law school with a J.D. degree or its equivalent; or

(3) study of law in an approved law school or schools by satisfying all requirements for graduation with a J.D. degree or its equivalent, except for not more than four semester hours or its equivalent in quarter hours; provided, however, that no person shall be licensed to practice law until graduation or satisfaction of all requirements for graduation, unless specifically exempted hereunder. If an Applicant under this subsection has not graduated with a J.D. degree or satisfied all the requirements for graduation within two years from the date that all parts of the bar examination are satisfactorily completed, the Applicant's examination scores shall be void.

(b) If a law school was an approved law school at the time when the Applicant enrolled, the law school shall be is deemed to be an approved

law school as to that Applicant for four years thereafter, regardless of its status at the date of when the Applicant's graduation graduated. If a law school was an approved law school at the time when the Applicant graduated, the Applicant shall be is deemed to be a graduate of an approved law school, regardless of the status of the school at the time when the Applicant enrolled.

(c) If a person an Applicant graduated from a law school that was not an approved law school at either the time the person when the Applicant enrolled or at the time the person and was not an approved law school when the Applicant graduated, the person Applicant is not a graduate of an approved law school even if the law school later became or becomes an approved law school.

Amendments to Rule XIII, Rules Governing Admission to the Bar of Texas

## Rule XIII

### Attorneys Applicants From Other Jurisdictions

#### § 1 Exemption from the Bar Examination for Applicants Who Are Authorized to Practice Law in Another State

(a) An attorney Applicant holding a valid, active law license issued by who is authorized to practice law in another state shall must meet the requirements imposed on any other Applicant under these Rules, except that: (1) An attorney holding a valid, active law license issued by another state the Applicant is eligible for exemption from the requirement of successfully completing the Texas Bar Examination; if the attorney Applicant:

(a) (A) has been actively and substantially engaged in the lawful practice of law in any state or elsewhere as his/her the Applicant's principal business or occupation for at least five of the last seven years immediately preceding the filing of the aApplication;

(b) (B) has a J.D. degree from an approved law school; and

(c) (C) has not failed the Texas Bar Examination.

#### § 2 Exemption from the Law Study Requirement for Applicants Who Are Authorized to

##### Practice Law in Another State

(2) An attorney Applicant holding a valid, active law license issued by who is authorized to practice law in another state is eligible for an exemption from the law study requirement prescribed by Rule III for admission to take the Texas Bar Examination; if the attorney Applicant:

(a) (A) has been actively and substantially engaged in the lawful practice of law in any state or elsewhere as his/her the Applicant's principal business or occupation for at least three of the last five years immediately preceding the filing of the most recent aApplication or re-application; and

(b) either:

(1) (B) (1) holds a J.D. degree; not based on study by correspondence, from an unapproved law school that is accredited in the jurisdiction state where it exists is located; or

(2) holds the equivalent of a J.D. degree; not based on study by correspondence, from a law school that is accredited in the jurisdiction state where it exists is located and which that requires the equivalent of a three-year course of study that is the substantially equivalent in duration and substance to of the legal education provided by an approved law school.

(b) An attorney holding a valid, active law license issued by a foreign nation is eligible for admission after passing the Texas Bar Examination

and after meeting all other requirements for admission imposed on any other Applicant under these Rules, **except that:**

(1) a foreign nation attorney who has not completed the law study required under these Rules

#### § 3 Exemption from the Law Study Requirement for Foreign Applicants With a Common-Law Legal Education or Who Are Authorized to Practice Law in a Common-Law Country

An Applicant is eligible for an exemption from the law study requirement prescribed by Rule III for admission to take the Texas Bar Examination without holding a J.D. degree from an approved law school if the attorney the Applicant satisfies the requirements of subsection (a), (b), or (c) below:

(a) the Applicant:

(1) has completed a course of study at a foreign law school that is accredited in the jurisdiction where it is located, and the course of study is:

(A) based on the principles of English common law; and

(B) substantially equivalent in duration to the legal education provided by an approved U.S. law school;

(2) is authorized to practice law in a foreign jurisdiction or another state; and

(3) has been actively and substantially engaged in the lawful practice of law for at least three of the last five years immediately preceding the Applicant's most recent Application;

(b) the Applicant:

(1) has completed a course of study at a foreign law school that is accredited in the jurisdiction where it is located, and the course of study is:

(A) based on the principles of English common law; and

(B) at least two years in duration; and

(2) has completed an LL.M. degree that meets the curricular requirements of Section 8 at an approved U.S. law school; or

(c) the Applicant:

(1) is authorized to practice law in a foreign jurisdiction, the jurisprudence of which is based on the principles of English common law; and

(2) has completed an LL.M. degree that meets the curricular requirements of Section 8 at an approved U.S. law school.

#### § 4 Exemption from Law Study Requirement for Foreign Applicants Without a Common-Law Legal Education

An Applicant is exempt from the law study requirement prescribed by Rule III if the Applicant satisfies the requirements of subsections (a)-(c) below:

(a) the Applicant has completed a course of study at a foreign law school that is accredited in the jurisdiction where it is located, and the course of study is:

(1) not based on the principles of English common law; and

(2) substantially equivalent in duration to the legal education provided by an approved U.S. law school;

(b) the Applicant has completed an LL.M. degree that meets the curricular requirements of Section 8 at an approved U.S. law school; and

(c) the Applicant is authorized to practice law in a foreign jurisdiction or in another state.

(A) has been actively and substantially engaged in the lawful practice of law of said foreign nation in that nation or elsewhere as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the most recent application or reapplication; and such attorney;

(B) has been licensed for at least five years to practice law in the highest court of the foreign nation;

(C) holds the equivalent of a J.D. degree, not based on study by correspondence, from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by an approved law school; **and**

(D) meets one of the following criteria:

(i) demonstrates to the Board that the law of such foreign nation is sufficiently comparable to the law of Texas that, in the judgment of the Board, it enables the foreign attorney to become a competent attorney in Texas without additional formal legal education; **or**

(ii) holds an L.L.M. from an approved law school.

(2) a foreign nation attorney who has not completed the law study required under these Rules is eligible for an exemption from the law study requirement for admission to take the Texas Bar Examination, without holding a J.D. degree from an approved law school if the attorney:

(A) has been actively and substantially engaged in the lawful practice of law of said foreign nation in that nation or elsewhere as his or her principal business or occupation for at least three of the last five years immediately preceding the filing of the most recent application or reapplication; and such attorney;

(B) has been licensed for at least three years to practice law in the highest court of the foreign nation;

(C) holds the equivalent of a J.D. degree, not based on study by correspondence, from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by an approved law school;

(D) demonstrates to the Board that the law of such foreign nation is sufficiently comparable to the law of Texas that, in the judgment of the Board, it enables the foreign attorney to become a competent attorney in Texas without additional formal legal education; **and**

(E) holds an L.L.M. from an approved law school.

#### § 5 No Degree By Correspondence

A J.D. degree or an equivalent degree completed at a foreign law school that is earned primarily through online courses or other distance-learning mediums does not satisfy the requirements of this Rule.

#### § 6 Transfer of Foreign Law School

An Applicant may be exempt from the law study requirement under Sections 3 or 4 even if the Applicant completed his or her course of study at a different foreign law school than the school at which the Applicant began, provided that all coursework and credit hours that count towards the applicable durational requirement are based on the same type of legal system-English common law or other-and are earned at a school accredited in the jurisdiction where it is located.

#### § 7 Accreditation of Foreign Law Schools

(a) If a law school was accredited when the Applicant enrolled, the law school is deemed to be an accredited law school as to that Applicant for four years thereafter, regardless of its status at the date of the Applicant's graduation. If a law school was accredited when the Applicant

graduated, the Applicant is deemed to be a graduate of an accredited law school, regardless of the status of the school when the Applicant enrolled.

(b) If an Applicant graduated from a law school that was not accredited when the Applicant enrolled and was not accredited when the Applicant graduated, the Applicant is not a graduate of an accredited law school even if the law school later became or becomes an accredited law school.

(c) Notwithstanding Sections 3 and 4, an Applicant is excused from demonstrating that a foreign law school is accredited if the Applicant demonstrates that no entity accredits or approves law schools in the jurisdiction in which the school is located.

#### § 8 LL.M. Curricular Criteria

(a) Unless subsection (b) or (c) applies, for an LL.M. degree to satisfy the requirements of this Rule, the course of study for which the degree is awarded must meet each of the following requirements:

(1) the program must consist of a minimum of 24 semester hours of credit-or the equivalent, if the law school is on an academic schedule other than a conventional semester system-which must consist of courses in substantive and procedural law or professional skills;

(2) the program must require at least 700 minutes of instruction time, exclusive of examination time, for the granting of one semester of credit;

(3) the program must include a period of instruction consisting of no fewer than two semesters of at least 13 calendar weeks each, or the equivalent thereof, exclusive of reading periods, examinations, and breaks;

(4) the program must not be completed exclusively during summer semesters, but a maximum of four semester hours of credit may be earned in courses completed during summer semesters;

(5) the program must be completed within 24 months of matriculation;

(6) all coursework for the program must be completed at the campus of an approved law school in the United States, except as otherwise permitted by paragraph 8 or subsection (b);

(7) the program must include:

(A) at least two semester hours of credit in professional responsibility;

(B) at least two semester hours of credit in legal research, writing, and analysis, which may not be satisfied by a research-and-writing requirement in a substantive law course;

(C) at least two semester hours of credit in a course designed to introduce students to distinctive aspects and fundamental principles of United States law, which may be satisfied by an introductory course in the American legal system or a course in United States constitutional law, civil procedure, or contract law-additional credit hours earned in a course that meets the requirements of this subparagraph may be applied towards the requirements of subparagraph (D); and

(D) at least six semester hours of credit in subjects tested on the Texas Bar Examination;

(8) the program may also include, towards satisfaction of the 24 semester hours of credit required by this Rule:

(A) up to four semester hours of credit in clinical coursework, if:

(i) the coursework includes a classroom instructional component that incorporates discussion, review, and evaluation of the clinical experience;

(ii) the clinical work is performed under the direct supervision of a member of the law school faculty or instructional staff; and

(iii) the time and effort required and the anticipated educational benefit are commensurate with the credit awarded; and

(B) up to six semester hours of credit in other coursework related to the law or legal training taught in conjunction with a joint degree program by a member of the law school faculty, a faculty member of the university or college with which the law school is affiliated, or a faculty member of a university or college with which the law school offers a joint degree program-provided that the coursework is completed at the U.S. campus of the law school, university, or college; and

(9) courses completed online or by other distance-learning mediums must not count towards the required minimum 24 semester hours of credit.

(b) A law school may petition the Board for an exception to the requirements of subsection (a)(6). The law school must demonstrate to the satisfaction of the Board that the quality of education provided at the school's campus abroad is substantially equivalent to the quality of education provided at the school's U.S. campus.

(c) An Applicant who completed an LL.M. degree prior to, or within two years after, the effective date of this Rule is exempt from demonstrating that the degree meets the curricular requirements of subsection (a).

#### § 9 Proof of Active and Substantial Engagement in the Practice of Law and Authorization to Practice Law in a Foreign Jurisdiction

(a) (e) An attorney Applicant who seeks exemption from the Texas Bar Examination or the law study requirement under a section of this Rule that requires a period of active and substantial engagement in the practice of law preceding the Application must applying under this Rule XIII shall furnish to the Board such proof of his/her active and substantial engagement in the practice of law as his/her principal business as the Board may require. But this requirement may not be satisfied by proof of practice *pro hac vice* under Rule XIX.

(b) Unless subsection (c) or (d) applies, an Applicant who seeks exemption from the Texas Bar Examination or the law study requirement under a section of this Rule that requires that the Applicant be authorized to practice law in a foreign jurisdiction or another state must submit written proof of the authorization from the entity with final jurisdiction over professional discipline in the foreign jurisdiction or state where the Applicant is authorized to practice. The document must certify:

(1) that the Applicant is authorized to practice law in the jurisdiction or state;

(2) the date that the Applicant became authorized to practice law in the jurisdiction or state; and

(3) that the Applicant remains in good standing as an attorney or counselor at law in the jurisdiction or state.

(c) The Board may waive the requirements of subsection (b) if an Applicant demonstrates good cause for failing to obtain the certificate required by that subsection.

(d) Proof of authorization to practice law may be satisfied by proof that the Applicant is lawfully engaged in the practice of law as an in-house counsel in a foreign jurisdiction that requires a person to surrender the person's law license in order to practice in-house.

(1) Unless otherwise specified in written policy adopted by the Board, the attorney must hold a valid, active law license under which the licensee, at all times during the period of practice for which credit is sought and at the time of filing a Texas application, has been entitled to

engage lawfully in the practice of law in the jurisdiction which issued the license.

(2) The phrase practice of law shall include:

(A) private practice as a sole practitioner or for a law firm, legal services office, legal clinic, public agency, or similar entity;

(B) practice as an attorney for an individual, a corporation, partnership, trust, or other entity, with the primary duties of furnishing legal counsel and advice, drafting and interpreting legal documents and pleadings, interpreting and giving advice regarding the law, or preparing, trying or presenting cases before courts, departments of government or administrative agencies;

(C) practice as an attorney for local, state, or federal government, with the same primary duties described in the preceding subsection;

(D) employment as a judge, magistrate, referee, or similar official for the local, state, or federal government, provided that such employment is open only to licensed attorneys;

(E) employment as a full-time teacher of law at a law school approved by the American Bar Association;

(F) any combination of the preceding categories.

(3) The requirement of active and substantial engagement in the practice of law as his/her principal business or occupation cannot be satisfied with practice by an attorney under Rule XIX.

(d) Any attorney applying and qualifying under this Rule XIII is required to take and pass the Multistate Professional Responsibility Examination (MPRE) as required under Rule V.

Amendments to Rule XIV, Rules Governing Admission to the Bar of Texas

#### **Rule XIV**

##### **Foreign Legal Consultants**

##### § 1 General Requirements as to Certification

In its discretion, the Supreme Court may certify to practice in Texas as a legal consultant (a "Foreign Legal Consultant"), without examination, an Applicant who satisfies the requirements of subsection (a) or (b):

(a) the Applicant:

(1) (a) for at least three of the five years immediately preceding the Application, has been is a member in good standing of a recognized legal profession in a foreign country, the members of which are authorized to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

(b) for at least three of the five years immediately preceding his or her Application has been a member in good standing of such legal profession and has actively and substantially been engaged in the lawful practice of law of the said foreign country in that country or elsewhere;

(2) (e) possesses the good moral character and general fitness requisite for a member of the Texas Bar;

(3) (d) is at least twenty-six (26) years of age; and

(4) (e) intends to practice as a Foreign Legal Consultant in Texas and to maintain an office in Texas for that purpose; or

(b) the Applicant:

(1) for at least three of the five years immediately preceding the Application:

(A) has been authorized to practice law in a foreign jurisdiction;

(B) has been a member in good standing of the bar of another state; or  
(C) has been actively and substantially engaged in the lawful practice of law in a foreign country or another United States jurisdiction;

(2) possesses the good moral character and general fitness requisite for a member of the Texas Bar;

(3) is at least 26 years of age; and

(4) intends to practice as a Foreign Legal Consultant in Texas only as an in-house counsel on behalf of an individual, corporation, limited liability company, partnership, association, nonprofit entity, or governmental agency whose primary business is not the provision of legal services to the public.

### § 2 Proof Required Application for Certification

An Applicant under this Rule shall must file with submit to the Board;

(a) an Application, on the forms designated by the Board, accompanied by the requisite fee; an Application that is signed by both the Applicant and a sponsoring member of the Texas Bar who is in good standing and has been a member of the Texas Bar of Texas for at least five (5) years; and including but not limited to;

(b) the fee required by Rule XVIII(a);

(c) either:

(1) (a) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the Applicant's admission to practice and the date thereof; and as to his or her good standing as such attorney or counselor at law or the equivalent; or other document from the entity with final jurisdiction over professional discipline in the foreign jurisdiction or state where the Applicant is authorized to practice that certifies:

(A) that the Applicant is authorized to practice law in the jurisdiction or state;

(B) the date that the Applicant was authorized to practice law in the jurisdiction or state; and

that the Applicant remains in good standing as an attorney or counselor at law in the jurisdiction or state; or

(C) if the Applicant seeks certification under Section 1(b)(1)(C) of this Rule, but the Applicant is not authorized to practice in a foreign jurisdiction or another state, proof that the Applicant has been actively and substantially engaged in the lawful practice of law in a foreign jurisdiction or another state for at least three of the five years immediately preceding the Application;

(b) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction of such foreign country;

(d) (e) a duly authenticated English translation of every document required by this Rule, such certificate and such letter if, in either case, it if the original is not in English; and

(d) documentation in duly authenticated form evidencing that the Applicant is lawfully entitled to reside and be employed in the United States of America pursuant to the immigration laws thereof; and

(e) such any other evidence as to demonstrating that the Applicant's educational and professional qualifications; good moral character and fitness; and compliance with satisfies the requirements of Section 1 of this Rule as that the Board may require.

Upon completion of the Board's review of the information submitted by the Applicant and its investigation of the Applicant's qualifications,

moral character, and fitness, if the Board determines that Applicant has satisfied the requirements of Sections 1 and 2 of this Rule, the Board shall must recommend to the Court the certification of the Applicant to practice in Texas as a Foreign Legal Consultant.

The certification to practice in Texas as a Foreign Legal Consultant is valid for one year, unless revoked for good cause shown, and is renewable upon the filing with the Board of an annual request, which shall be accompanied by

(a) payment of the annual renewal fee;

(b) evidence satisfactory to the Board reflecting the completion of three hours of Texas Mandatory Continuing Legal Education approved ethics programs; and

(c) such evidence as the Board shall deem necessary that the requirements for the original certification continue to be met.

### § 3 Scope of Practice

A person certified to practice as a Foreign Legal Consultant under this Rule may render legal services in Texas in the manner and to the extent permitted by the jurisdiction in which such the person is admitted authorized to practice or, in the case of a person who satisfies the requirements of Section 1(b)(1)(C) of this rule, to the extent permitted by the jurisdiction in which the person has been actively and substantially engaged in the lawful practice of law. subject, however, to the limitations that he or she shall But the Foreign Legal Consultant must not:

(a) appear for a person other than himself or herself as an attorney in any court, or before any magistrate or other judicial officer, in Texas; or

(b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America; or

(c) prepare:

(1) (i) any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof; or

(2) (ii) any instrument relating to the administration of a decedent's estate in the United States of America; or

(d) prepare any instrument in respect of the marital or parental relations, rights, or duties of a resident of the United States of America, or the custody or care of the children of such a resident; or

(e) render professional legal advice on the law of Texas or of the United States of America (unless the person is licensed in another state), (whether rendered incident to the preparation of legal instruments or otherwise) except:

(1) on the basis of advice from a person, whom the Foreign Legal Consultant has identified to the client, who: duly qualified and entitled (otherwise than by virtue of having been certified under this Rule) to render professional legal advice in Texas on such law and with whom the Foreign Legal Consultant

(A) is authorized to practice law in Texas or in the United States; and

(B) either:

(i) is serves as co-counsel with the Foreign Legal Consultant on a matter for the client; with a Texas lawyer that has been identified to the client; or

(ii) has an identified affiliation is affiliated with the Foreign Legal Consultant through; employment, partnership, shareholder or other membership relationship in or with in the same law firm, company, or governmental agency; or

- (A) the same law firm;
- (B) a company, partnership, or other entity, or
- (C) a governmental agency or unit; or
- (2) as an in-house counsel advising the Foreign Legal Consultant's employer in the scope of his or her employment;
- (f) in any way hold himself or herself out as a member of the Bar of Texas; or
- (g) carry on his or her practice under, or utilize in connection with such practice, any name, title, or designation other than one or more of the following:
  - (1) (i) his or her own name;
  - (2) (ii) the name of the law firm with which he or she is affiliated;
  - (3) (iii) his or her authorized title in the foreign country of his or her admission in which he or she is authorized to practice, which may be used in conjunction with the name of such country; and
  - (4) (iv) the title "Foreign Legal Consultant," which may be used in conjunction with the words "admitted authorized to the practice of law in [name of the foreign country of his or her admission in which he or she is authorized to practice]".

#### § 4 Rights and Obligations

Subject to the limitations set forth in Section 3 of this Rule, a person certified as a Foreign Legal Consultant under this Rule shall be considered to be a lawyer affiliated with the Bar of Texas and shall be entitled and subject to:

- (a) the rights and obligations of a member of the Texas Bar that are set forth in the State Bar Act, and the State Bar Rules, that apply to a member of the Bar of Texas under and the Texas Disciplinary Rules of Professional Conduct or that arising arise from the other conditions and requirements that apply to a member of the Bar of Texas under the Texas Disciplinary Rules of Professional Conduct; and
- (b) the rights and obligations of a member of the Bar of Texas with respect to:
  - (1) (i) affiliation in the same law firm with one or more members of the Bar of Texas, including by:
    - (A) employing one or more members of the Bar of Texas;
    - (B) being employed by one or more members of the Bar of Texas or by any partnership or professional corporation which that includes members of the Bar of Texas or which that maintains an office in Texas; and
    - (C) being a partner in any partnership or a shareholder in any professional corporation which that includes members of the Bar of Texas or which that maintains an office in Texas; and
  - (2) (ii) attorney-client privilege, work-product privilege, and similar professional privileges.

A person certified as a Foreign Legal Consultant under this Rule shall not be considered or deemed to be is not a "nonlawyer" as that term is used in either Rule §5.03 or Rule 5.04 of the Texas Disciplinary Rules of Professional Conduct.

A person who receives legal advice from a Foreign Legal Consultant is entitled to all privileges arising from the attorney-client relationship.

#### § 5 Disciplinary Provisions

A person certified to practice as a Foreign Legal Consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as persons admitted to the Texas Bar and to this end:

(a) Every person certified to practice as a Foreign Legal Consultant under this Rule: (i) shall be is subject to control by the Board and to censure, suspension, removal, or revocation of his or her certification to practice by the Supreme Court and shall otherwise be governed by Texas Disciplinary Rules of Professional Conduct; and

(b) (ii) Every Foreign Legal Consultant shall must execute and file with the Court Board, in such form and manner as the Board may prescribe:

(1) (A) his or her a written commitment

(A) to observe the State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct, to the extent that the Act and the Rules are applicable to the legal services authorized under Section 3 of this Rule; and

(B) a written undertaking commitment to notify the Board of any change in such the person's good standing as a member of the a foreign legal profession referred to in Section 1(a) of this Rule and of any final disciplinary action of the professional body or public authority that regulates attorneys in the foreign jurisdiction in which the Foreign Legal Consultant is authorized to practice law referred to in Section 2(a) of this Rule imposing any disciplinary censure, suspension, or other sanction upon such person; and

(2) (C) a duly acknowledged instrument, in writing, notarized document that sets setting forth his or her the person's address in Texas and designating designates the Executive Director of the Board as his or her the person's agent for service of process upon whom process may be served, with like effect as if served personally upon him or her, in any action or proceeding thereafter brought against him or her the person and arising out of or based upon any that arises from legal services rendered or offered to be rendered by him or her the person within or to residents of Texas, whenever after due diligence service cannot be made upon him or her on the person at such the address or at such new address in Texas as he or she shall have filed with the Board by means of a duly acknowledged supplemental instrument in writing on file with the Board.

(bc) Service of process on the Executive Director of the Board, pursuant to the designation filed as aforesaid, under subsection (b)(2) shall must be made by personally delivering to, and leaving with, the Executive Director of the Board, or with a deputy or assistant another person at the office of the Board who is authorized to receive such service, at the office of the Board, duplicate two copies of such process the citation and petition together with and a fee of \$10. Service of process shall be complete when the Executive Director of the Board has been so served. The Board shall must promptly send one of such copies copy to the Foreign Legal Consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such Foreign Legal Consultant at the address specified designated by him or her as aforesaid the Foreign Legal Consultant under subsection (b)(2).

#### § 6 Renewal of Certification

(a) Unless revoked by the Board under Section 7 of this Rule, a certification to practice as a Foreign Legal Consultant is valid for one year.

(b) A Foreign Legal Consultant may renew his or her certification by submitting to the Board at least 60 days before the certification expires:

(1) a written request for renewal of the certification;

(2) the renewal fee required by Rule XVIII(a);

(3) proof that the Applicant completed three hours of minimum continuing legal education in ethics courses accredited by the State Bar of Texas; and



(4) a written statement, signed by the Applicant under oath, that the Applicant complied with the terms of the certificate and this Rule during the certification period.

(c) The Board must grant the Applicant's request unless it determines that the Applicant is not entitled to renew his or her certification under this Rule.

(d) If the renewal application is timely submitted, the Board must notify the Applicant of the Board's decision before the Applicant's certification expires. If the renewal application is not timely submitted, the Applicant, upon a showing of good cause, may submit a renewal application up to 180 days after the Applicant's certification expires. After the 180-day grace period has passed, an Applicant must reapply for certification under Section 2 of this Rule.

#### § 6 Application and Renewal Fees

An Applicant for certification as a Foreign Legal Consultant under this Rule shall pay the Foreign Legal Consultant fee in the amount specified in Rule XVIII(a) of these Rules. A person certified as a Foreign Legal Consultant shall pay annual renewal fees in the amount specified in Rule XVIII(a) of these Rules.

#### § 7 Revocation of Certification

If the Board determines that a person certified as a Foreign Legal Consultant under this Rule no longer meets the requirements for certification set forth in Sections 1(a) or 1(e) of this Rule, it the Board shall must recommend to the Court that the person's certification granted to such person hereunder be revoked, unless the Board waives under Rule XX(e) the requirements that are lacking.

#### § 8 Admission to Bar

If a person certified as a Foreign Legal Consultant under this Rule is subsequently admitted to the Texas Bar under other provisions of these Rules, the certification granted to such person hereunder shall to practice as a Foreign Legal Consultant is be deemed superseded by the license granted to such person to practice law as a person admitted to the Texas Bar.

#### § 9 Application for Waiver of Provisions

The Board, upon application, may in its discretion waive any provision of this Rule in accordance with the provisions of Rule XX(e) of these Rules.

Amendments to Rule XVII, Rules Governing Admission to the Bar of Texas

### Rule XVII

#### Issuance of License Certificates and Cancellation of License Unlawfully Obtained

(a) Upon an Applicant's becoming entitled to a license under these Rules, the Board shall must certify such the Applicant to the Supreme Court, whose Clerk shall thereupon will issue the corresponding license in the form of a written certificate. The license shall may be issued only in the name as shown on the Applicant's birth certificate or a valid, government-issued identification card as changed by the final order of a court of competent jurisdiction or by marriage, except that a given name may be omitted or represented by an initial if the Applicant so requests in writing. No license shall may be issued using an alias, assumed name, nickname, or abbreviation of a name.

(b) All law licenses are issued upon on the condition that the Applicant has faithfully complied with these Rules. If at any time it appears that an Applicant has obtained a license fraudulently or by willful failure to comply with these Rules, after notice and a hearing, the Board may recommend to the Supreme Court that such the license be withdrawn

and canceled, and the name of the license holder stricken from the roll of attorneys.

(c) No license issued hereunder shall be under this Rule is valid unless the Applicant named therein license holder has paid the required fees and has enrolled in the State Bar of Texas in compliance with the State Bar Rules.

(d) The license certificate belongs to the Supreme Court of Texas and shall must be surrendered to the Court upon proper demand.

Amendments to Rule XIX, Rules Governing Admission to the Bar of Texas

### Rule XIX

#### Requirements for Participation in Texas Proceedings by a Non-Resident Attorney

(a) A reputable attorney, licensed in another state or in a foreign jurisdiction but not in Texas, who resides outside of Texas may seek permission to participate in the proceedings of any particular cause in a Texas court by complying with the requirements of Texas Government Code Section 82.0361 concerning payment of a non-resident attorney fee to the Board of Law Examiners as a mandatory initial requirement. Upon completion of this requirement and receipt of an acknowledgment issued by the Board of Law Examiners, the non-resident attorney shall file with the applicable Texas court a written, sworn motion requesting permission to participate in a particular cause. The motion shall contain:

(1) the office address, telephone number, and, if available, the telecopier fax number, and email address of the non-resident attorney movant;

(2) the name and State Bar card number of an attorney licensed in Texas, with whom the non-resident attorney will be associated in the Texas proceedings; and that attorney's office address, telephone number, and, if available, telecopier fax number, and email address;

(3) a list of all cases and causes, including cause number and caption, in Texas courts in which the non-resident attorney has appeared or sought leave to appear or participate within the past two years;

(4) a list of jurisdictions in which the non-resident attorney is licensed, including federal courts, and a statement that the non-resident attorney is or is not an active member in good standing in each of those jurisdictions;

(5) a statement that the non-resident attorney has or has not been the subject of disciplinary action by the Bar or courts of any jurisdiction in which the attorney is licensed within the preceding five (5) years, and a description of any such disciplinary actions;

(6) a statement that the non-resident attorney has or has not been denied admission to the courts of any State or to any federal court during the preceding five (5) years;

(7) a statement that the non-resident attorney is familiar with the State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct governing the conduct of members of the State Bar of Texas, and will at all times abide by and comply with the same so long as such Texas proceeding is pending and said Applicant has not withdrawn as counsel therein.

(b) The motion of the non-resident attorney seeking permission to participate in Texas proceedings shall must be accompanied by motion of the resident practicing Texas attorney with whom the non-resident attorney shall will be associated in the proceeding of a particular cause. The which motion shall must contain a statement that the resident attorney finds the Applicant to be a reputable attorney and recommends

that the Applicant be granted permission to participate in the particular proceeding before the court.

(c) The motion of the non-resident attorney ~~shall~~ **must** also be accompanied by the proof of payment or proof of indigency acknowledgment issued by the Board of Law Examiners.

(d) The court may examine the non-resident attorney to determine that the non-resident attorney is aware of and will observe the ethical standards required of attorneys licensed in Texas and to determine whether the non-resident attorney is appearing in courts in Texas on a frequent basis. If the court determines that the non-resident attorney is not a reputable attorney who will observe the ethical standards required of Texas attorneys, that the non-resident attorney has been appearing in courts in Texas on a frequent basis, that the non-resident attorney has been engaging in the unauthorized practice of law in the state of Texas, or that other good cause exists, the court or hearing officer may deny the motion.

(e) If, after being granted permission to participate in the proceedings of any particular cause in Texas, the non-resident attorney engages in professional misconduct as that term is defined by the State Bar Act, the State Bar Rules, or the Texas Disciplinary Rules of Professional Conduct, the court may ~~revoke such~~ **revoke** the non-resident attorney's permission to participate in the Texas proceedings and may cite the non-resident attorney as for contempt. In addition, the court may refer the matter to the Grievance Committee of the Bar District wherein **in which** the court is located ~~for such action by the Committee as it deems necessary and desirable~~.

(f) The filing of a motion under this Rule ~~shall~~ **constitutes** submission to the jurisdiction of the Grievance Committee for the District wherein **in which** the court is located. The county in which the court is located ~~shall be~~ **is** considered the county of residence of ~~said~~ **the** non-resident attorney for purposes of determining venue in any disciplinary action involving ~~said~~ **the** attorney.

TRD-201402702  
Martha Newton  
Rules Attorney  
Supreme Court of Texas  
Filed: June 10, 2014

◆ ◆ ◆

## Texas Department of Transportation

### Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Kimble County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

**Current Project:** Kimble County; TxDOT CSJ No.: 1407JNCTN.

Scope: Provide engineering/design services to:

1. Construct Shade Hangars, Foundation, and Associated Pavement
2. Construct 12-unit T-Hangar and Associated Pavement
3. Crackseal Pavement

**The DBE goal for the design of the current project is 7%. The goal will be re-set for the construction phase.** The TxDOT Project Manager is Paul Slusser.

The following is a listing of proposed projects at the Kimble County Airport during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following: rehab and mark runway, taxiway, aprons; update terminal plan; expand terminal building; construct additional T-Hangars; install LED MIRLS; upgrade electrical vault.

Kimble County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Kimble County Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

**SEVEN** completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division, at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than July 15, 2014, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under the Notice to Consultants link. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT, Aviation Division, for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions,

please contact Beverly Longfellow. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201402719

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: June 11, 2014

◆ ◆ ◆  
**Sul Ross State University**

**Request for Proposals**

Pursuant to Texas Government Code, Chapter 2254, Sul Ross State University, a member of the Texas State University System, announces this Request for Proposals #14-013, Consulting Services for Nursing Accreditation, to advise and assist with accreditation by the Commission on Collegiate Nursing Education (CCNE) for Rio Grande College in Uvalde, Texas.

**Project Summary:** Review Sul Ross State University Rio Grande College and RN-BSN Program Documents, including but not limited to mission, philosophy, websites, catalogs, organizational charts, brochures and recruitment materials, student and faculty handbooks and policies, and contracts and clinical agreements related to the RN-BSN program in light of CCNE Standards. Review Sul Ross State University Rio Grande College RN-BSN program resources including available classroom and faculty space, laboratories including the Sim Lab, available clinical sites and preceptors, program and college student services, library resources, IT and video conferencing resources, current budget summaries and projected future budget needs, and faculty qualifications and experience in light of CCNE Standards. Provide ongoing CCNE accreditation consultation by phone and e-mail to director and faculty on the CCNE review and application process.

In accordance with the provisions of Government Code §2254.028(c), the president of Sul Ross State University has approved the use of a private consultant and has determined that the required fact exists.

Proposals are to be received no later than 4:30 p.m., Monday, July 7, 2014. A copy of the request for proposal packet is available upon request from Noe Hernandez, Director of Purchasing, Sul Ross State University, P.O. Box C-116, Alpine, Texas 79832, phone (432) 837-8045, fax (432) 837-8046.

Vendors will be evaluated on credentials for the work to be done, previous successful experience on similar grant projects and interpersonal and written communication skills. Proposals will be evaluated on the fulfillment of the requirements as outlined in the specifications, a fee schedule which is appropriate to the proposed activities, and the quality of performance on previous contracts or experience on similar projects.

The University reserves the right to reject any and all proposals received if it is determined to be in the best interest of the University. All material submitted in response to this request becomes the property of the University and may be reviewed by other vendors after the official review of the proposals.

TRD-201402649

Quint Thurman

Interim President

Sul Ross State University

Filed: June 6, 2014

◆ ◆ ◆  
**Texas State University System**

**Notice of Request for Proposals - Risk Management and Insurance Consulting Services**

The Texas State University System (TSUS) invites consultants experienced in advising public entities (particularly institutions of higher education) by assisting the System Office's and component institutions' staffs in multiple aspects of risk management and insurance analysis.

Any firm intending to respond to this notice should obtain Request for Proposals No. 758-14-00024 and follow the instructions for responding contained therein. A copy of the RFP may be downloaded from the Electronic Business Daily at <http://esbd.cpa.state.tx.us/>. Select "TX STATE UNIV SYST. BOARD OF REGENTS-758" from the drop-down menu. The name of the individual who should be contacted by a consultant that intends to make an offer is Daniel Harper, Deputy Vice Chancellor for Finance, Texas State University System, 208 East 10th Street, Suite 600, Austin, Texas 78701.

The closing date for receipt of offers is July 2, 2014, 4:00 p.m. (C.D.T.). The award date is anticipated to be on or before August 31, 2014. TSUS reserves the right to accept or reject any or all proposals submitted. TSUS is under no legal or other obligation to execute a contract or agreement on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TSUS to pay for any costs incurred prior to the award of a contract or agreement.

As provided by Texas Government Code, §2254.028(c), the Chancellor of the system has concluded that consulting services are necessary for the reason that follows: The System does not maintain staff with the expertise and industry knowledge necessary for a program of this size and complexity.

TRD-201402723

Roland Smith

Vice Chancellor for Finance

Texas State University System

Filed: June 11, 2014

◆ ◆ ◆  
**Texas Water Development Board**

**Applications for June 18, 2014**

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21743, a request from the North Plains Groundwater Conservation District, P.O. Box 795, Dumas, Texas 79029-0795, received March 31, 2014, for a loan in the amount of \$620,000 from the Agriculture Water Conservation Loan Program to provide financing for an agriculture water conservation program.

Project ID #62623, a request from the City of Winters, 310 South Main, Winters, Texas 79567, received August 30, 2013, for financial assistance in the amount of \$603,500 consisting of a \$425,000 loan and \$178,500 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning, acquisition and design for the development of an additional source of water to supplement the City's surface water supply and the granting of a waiver of the requirement that the project be consistent with the State Water Plan and with an approved regional water plan.

Project ID #73689, a request from the Greater Texoma Utility Authority on behalf of the City of Sherman, 5100 Airport Drive, Denison, Texas 75020-8448, received January 31, 2014, for a \$1,780,000 loan from the Clean Water State Revolving Fund to reduce inflow and infiltration issues at the Wastewater Treatment Plant.

Project ID #62635, a request from the Bandera County Fresh Water Supply District Number 1, 220 Water View Drive, Lake Hills, Texas 78063-6274, received February 11, 2014, for financial assistance in the amount of \$785,000 consisting of a \$585,000 loan and \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning, acquisition, design, and construction for a new well, storage and pumping facilities, and improvements to the existing water treatment plant.

Project ID #62636, a request from the Holly Huff Water Supply Corporation, P.O. Box 1917, Jasper, Texas 75951-1917, received February 18, 2014, for financial assistance in the amount of \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund to construct a new well.

Project ID #62637, a request from the New Ulm Water Supply Corporation, P. O. Box 73, New Ulm, Texas 78950, received February 28, 2014, for financial assistance in the amount of \$63,805 in loan forgiveness from the Drinking Water State Revolving Fund for design of upgrades to water distribution and storage.

Project ID #73688, a request from the City of Port Arthur, P.O. Box 1089, Port Arthur, Texas 77641-1089, received November 26, 2013,

for financial assistance in the amount of \$5,960,000, consisting of a loan from the Clean Water State Revolving Fund to finance planning and design costs relating to the construction of a new wastewater treatment plant.

Project ID #62633, a request from the City of Port Arthur, P.O. Box 1089, Port Arthur, Texas 77641-1089, received January 27, 2014, for financial assistance in the amount of \$1,370,000, consisting of a loan from the Drinking Water State Revolving Fund to finance planning and design costs relating to the construction of new distribution lines to address water loss and low pressure.

TRD-201402700

Les Trobman

General Counsel

Texas Water Development Board

Filed: June 10, 2014



## 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)

## SALES AND CUSTOMER SUPPORT

**Sales** - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

**\*Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

**Customer Support** - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printcdsc](http://www.lexisnexis.com/printcdsc)



**LexisNexis**<sup>®</sup>

It's how you know<sup>™</sup>