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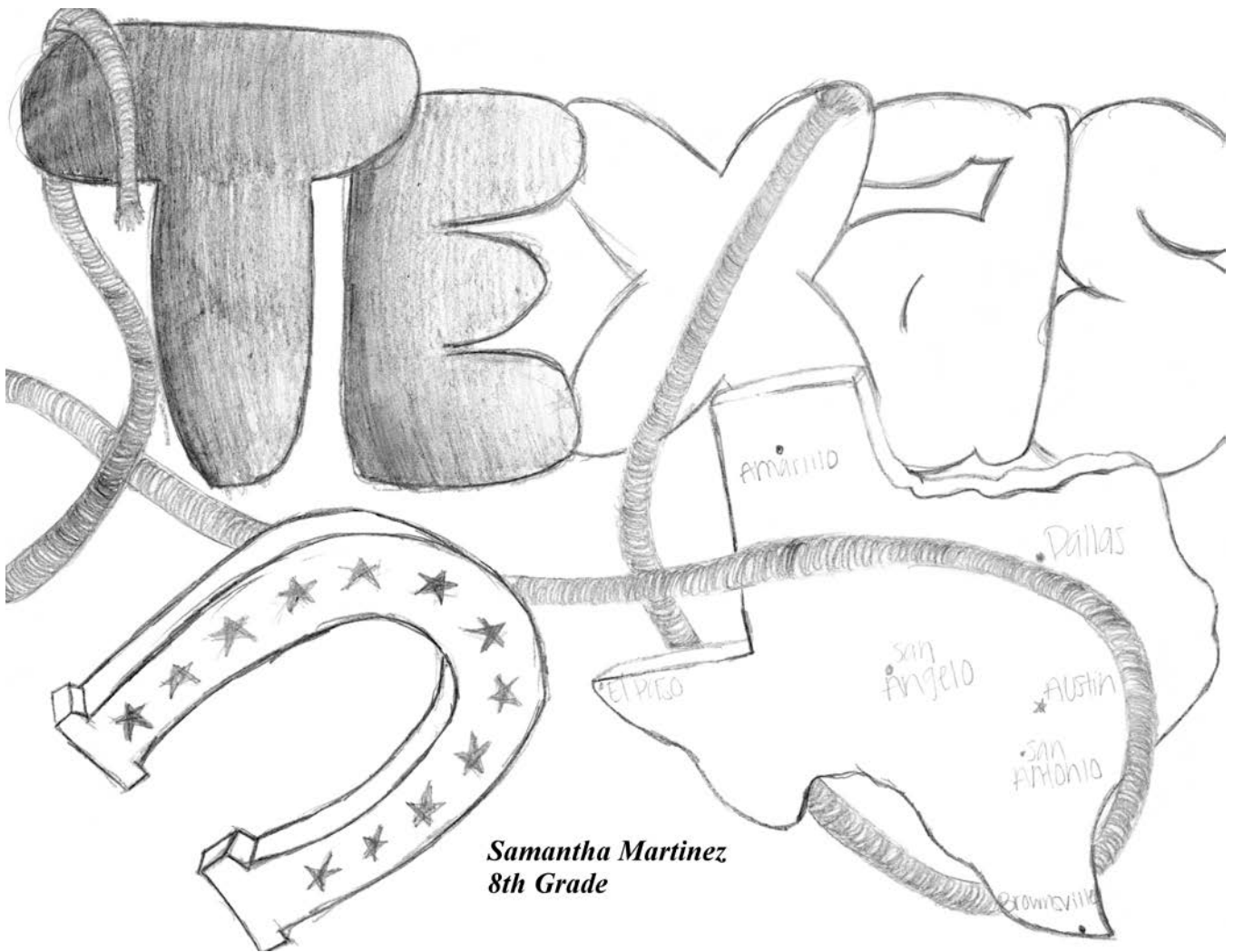
# TEXAS REGISTER

Volume 39 Number 35

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Pages 6761 - 6

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*Samantha Martinez*  
8th Grade

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

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# TEXAS REGISTER

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# THE ATTORNEY GENERAL

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

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

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

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

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## Requests for Opinions

RQ-1213-GA

### Requestor:

The Honorable Andrew Lucas

Somervell County Attorney

P.O. Box 1335

Glen Rose, Texas 76043

Re: Determination of terms of office for county hospital district board members after a tie vote in the initial election (RQ-1213-GA).

### Briefs requested by September 8, 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-201403965

Katherine Cary

General Counsel

Office of the Attorney General

Filed: August 20, 2014



## Opinions

Opinion No. GA-1076

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

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

### SUMMARY

A county's use of tax increment financing to fund transportation projects in a county energy transportation reinvestment zone could be subject to challenge under the equal and uniform taxation requirement in article VIII, §1(a) of the Texas Constitution.

A county creating a county energy transportation reinvestment zone under §222.1071 of the Transportation Code may not place general revenue funds into the tax increment account.

### Opinion No. GA-1077

The Honorable E. Bruce Curry

216th Judicial District Attorney

200 Earl Garrett Street, Suite 202

Kerrville, Texas 78028

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

### SUMMARY

A court would likely conclude that an order issued under a previous version of article 42.12, §5(c) of the Code of Criminal Procedure, granting a defendant an early termination of deferred adjudication community supervision, does not affect the deferred adjudication's potential status as an "adjudication" subject to the sex offender registration requirements of chapter 62 of the Code of Criminal Procedure.

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-201403933

Katherine Cary

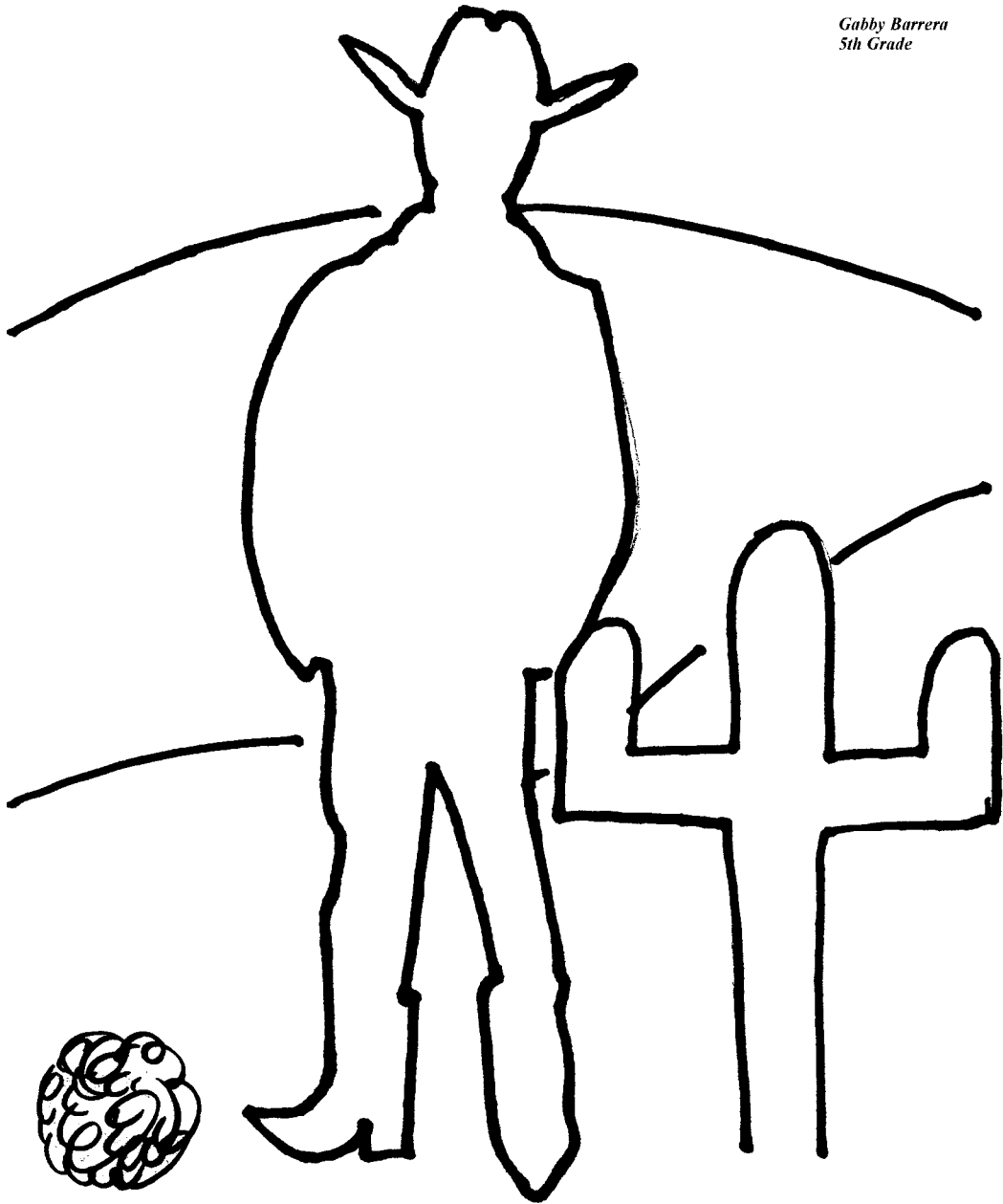
General Counsel

Office of the Attorney General

Filed: August 19, 2014



Gabby Barrera  
5th Grade





# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 4. OFFICE OF THE SECRETARY OF STATE

#### CHAPTER 73. STATUTORY DOCUMENTS

##### SUBCHAPTER B. SESSION LAWS

###### 1 TAC §73.11

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

The Office of the Secretary of State proposes to repeal §73.11 concerning the Publication of Session Laws. Government Code §2158.064 required the Secretary of State to direct the compilation and printing of laws and resolutions. This requirement was repealed. In its place, the Secretary of State is directed to publish and maintain the bills electronically and make them available on the Internet. Senate Bill 1, Chapter 4, Section 20.02, 82nd Legislature, First Called Session, repealed Government Code, Chapter 2158, Subchapter B, including §2158.064. Consequently, the administrative rule is no longer necessary.

Carmen Flores, Director of Business and Public Filings, has determined that for each year of the first five years that the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Ms. Flores has determined that for each year of the first five years the repeal is in effect the public benefit anticipated is to make it clear that the secretary of state no longer has the responsibility for compiling and printing session laws. There will be no effect on small or micro businesses and no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposal may be submitted in writing to: Mirand Zepeda, Office of the Secretary of State, Government Filings Section, P.O. Box 12887, Austin, Texas 78711-2887. Comments must be received no later than 12:00 noon, September 29, 2014.

#### STATUTORY AUTHORITY

The repeal of §73.11 is proposed under the authority of §2001.004(1) of the Government Code, which requires state agencies to adopt procedural rules of practice.

No other code or statute is affected by the proposal.

#### §73.11. *Publication of Session Laws.*

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 August 15, 2014.

TRD-201403833

Carmen Flores

Director of Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 28, 2014

For further information, please call: (512) 463-6182



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 21. CITRUS

##### SUBCHAPTER A. CITRUS QUARANTINES

###### 4 TAC §21.6

The Texas Department of Agriculture (the department) proposes amendments to Chapter 21, Subchapter A, §21.6, concerning restrictions for movement of citrus quarantined articles. The amendments are proposed to provide a regulatory framework for the movement of citrus quarantined articles produced in a certified nursery located outside of the Citrus Zone to a location inside of the Citrus Zone, by requiring those plant nurseries to meet the same previously-established plant propagation standards required of nurseries inside the Citrus Zone.

These amendments are proposed to complement restrictions found in 4 TAC §§19.615 - 19.622, related to the quarantine of citrus greening disease, and in Chapter 21, Subchapter D, related to the Citrus Nursery Stock Certification Program, in combatting the spread of citrus greening and other quarantined diseases of citrus and related plants. The amendments allow for the movement of citrus quarantined articles into the Citrus Zone, in a manner that effectively slows the spread of citrus greening and other quarantined pests and diseases. Amendments to §21.6 propose requirements for movement of quarantined articles from areas of Texas outside of the Citrus Zone into the Citrus Zone.

Janet Fults, Director for Environmental and Biosecurity Programs, has determined that for the first five-year period the proposed amendment is in effect, there will be cost-recovery fiscal implications for state government as a result of enforcing and administering the amended section, as proposed. The fiscal implications will be covered by an existing fee imposed on regulated nursery facilities for the purpose of cost recovery. There will be no fiscal implications for local government.

Ms. Fults has also determined that for each of the first five years the proposed amendment is in effect, the public benefit antici-

pated as a result of enforcing the proposed amendment will be a reduction in the spread of citrus greening disease due to plant production activities and increased protection of plant production markets. The only costs will be to citrus plant nurseries who choose to utilize the new market this rule enables. This may include small and/or micro-businesses related to treatment of quarantined articles and tagging of nursery stock with treatment date. In order to comply with the proposed amended section, businesses outside of the Citrus Zone that produce citrus nursery stock or rootstock and choose to sell this product into the Citrus Zone will be required to propagate and grow in facilities certified to meet previously established sanitation, record-keeping and structural requirements. The cost of certification is calculated, based on the number of square feet of insect proof facilities. The cost of required facilities, sanitation and record keeping requirements cannot be determined because it will depend on factors such as the volume of articles being propagated and grown, facilities design, plant density, production time and costs associated with required repairs of natural or manmade damage to regulated structures. Consequently, the specific cost to impacted businesses cannot be determined at this time.

Comments on the proposal may be submitted to Janet Fults, Director for Environmental and Biosecurity Programs, 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 is proposed under the Texas Agriculture Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to prevent the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area and rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §71.0091, which provides the department with the authority to adopt rules as necessary for the seizure, treatment, and destruction of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 71.

#### §21.6. Restrictions.

##### (a) General.

(1) In addition to any other applicable restrictions imposed by regulations adopted under Chapter 71, Texas Agriculture Code, quarantined articles may not be transported into Texas except as outlined in subsections (b) and (c) of this section. Legible and complete records sufficient to document compliance with all requirements in this section shall be kept, maintained, accessible, and made available for inspection during normal business hours for a time period no less than years, including any specific recordkeeping requirements specified below.

(2) Quarantined articles from areas of Texas outside of the citrus zone may not be transported into the citrus zone except:

(A) if [when] approved by the department under the conditions of a compliance agreement for research, [or] for testing of official regulatory samples, or for use in the production of parasites, predators or pathogens of a quarantined pest or other purpose deemed necessary by the department; or

(B) if the quarantined articles:

(i) are produced in a nursery that is certified by the department in accordance with Subchapter D of this chapter; and

(ii) are maintained free of Asian citrus psyllids and other quarantined pests and diseases; and

(iii) are transported from a Certified Citrus Nursery directly into the Citrus Zone, according to requirements in paragraphs (3) and (4) of this subsection; and

(iv) are treated as prescribed in the USDA Treatment Manual (USDA Treatment Manual, D301;76(b), Table 5-8-1); specifically, quarantined articles are treated with an USDA-approved soil drench or in-ground granular systemic insecticide (an appropriately labeled formulation of dinotefuran or imidacloprid), followed by a foliar spray (an appropriately labeled formulation of *bifenthrin*, *chlorpyrifos*, *deltamethrin*, *fenpropathrin*, or *imidacloprid/cyfluthrin*) prior to shipment. The mandatory soil drench or in-ground granular systemic insecticide treatment shall be applied to each regulated article either 20-40 days prior to movement of the article; or up to date of movement only if the article was previously treated 20-90 days prior to movement. The mandatory foliar spray shall be applied no more than 10 days prior to movement. All treatments must be applied according to the EPA label, including, but not limited to, application directions, restricted entry interval (REI), preharvest interval (PHI) and Worker Protection Standards (WPS). Records of the lot numbers of treated plants, the pesticides applied (including at a minimum; application dates, EPA registration number of product used, method of treatment, name of applicator) for each mandatory treatment shall be maintained by the nursery for two years following the last treatment date for a given lot of regulated articles; and

(v) have attached to each article, or to the container in which the article is planted, a waterproof tag or label upon which is legibly printed in permanent lettering the application date of the soil drench or in ground granular systemic insecticide mandated in this section as "TX MM/DD/YYYY".

(3) Requirements for shipment from a certified citrus nursery outside of the Citrus Zone to a certified citrus nursery located inside the Citrus Zone:

(A) if shipped by U.S. Mail or a package delivery service: shipment shall be sealed using insect exclusionary containers; the containers shall not leave the originating certified citrus nursery until sealed; or

(B) if shipped by enclosed truck, other enclosed vehicle or enclosed trailer: shipment must be loaded at the originating certified citrus nursery in a manner that prevents introduction of psyllids or other pests. The shipping compartment shall be kept closed at all times, except when regulated articles are entering or exiting the compartment. After having been loaded into the vehicle, the shipment must be moved immediately and directly to the destination, without other stops except as necessitated by traffic, fuel or an emergency.

(4) Requirements for shipment from a certified citrus nursery outside the Citrus Zone to a location inside the Citrus Zone that is not a certified citrus nursery:

(A) if shipped by US Mail or a package delivery service. Shipment shall be in sealed insect exclusionary containers; the containers shall not leave the originating certified citrus nursery until sealed; or

(B) if shipped by truck, other vehicle or trailer:

(i) shipment shall be in a transport vehicle that is completely psyllid-proof (enclosed or with the plants completely covered with a tarp or other psyllid-proofing material); or

(ii) all regulated plants being transported must have been treated with a kaolin-based particle film, such as SurroundT and the coating has not been compromised by movement, weather, etc. Treatment must be made no more than 7 days prior to date of shipping. Shipment must be moved immediately and directly from the certified citrus nursery to the destination without stops, except as necessitated by such necessary considerations such as traffic, fuel, or an emergency.

(5) Any facility that moves quarantined articles into the Citrus Zone under paragraph (2) of this subsection shall provide ready access to the certified citrus nursery facility and all relevant records during normal business hours to authorized representative of TDA.

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

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

Filed with the Office of the Secretary of State on August 18, 2014.

TRD-201403923

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 28, 2014

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



## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

##### 7 TAC §5.101

The Finance Commission of Texas ("the commission") proposes new §5.101, concerning education and training of employees of the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, "finance agencies.") The new rule is proposed to implement Texas Government Code, §656.048 on providing assistance for education and training of finance agency employees under certain conditions.

Charles G. Cooper, Commissioner, Texas Department of Banking, Caroline Jones, Commissioner, Texas Department of Savings and Mortgage Lending, and Leslie L. Pettijohn, Consumer Credit Commissioner ("the commissioners"), have determined that for the first five-year period the proposed rule is in effect, there will be nominal fiscal implications for state government, and only as part of the costs of training and education as allocated within each finance agency's respective budget. There will be no fiscal implication for local government as a result of enforcing or administering the rule.

The commissioners have also determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that the finance agencies will have a regulation in place to coordinate with policies stating the circumstances under which the finance agencies will support the job-related education and training of employees, which should, in turn, improve employees' performance.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will not be any anticipated costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed rule must be submitted no later than 5:00 p.m. on September 29, 2014. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Government Code, §656.048, which requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency; and the obligations assumed by the administrators and employees on receiving the training and education.

##### §5.101. Employee Training and Education Assistance Programs.

(a) For purposes of this rule, "finance agencies" means the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner. Pursuant to the State Employees Training Act, Chapter 656, Subchapter C of the Texas Government Code, it is the policy and practice of the finance agencies to encourage employees' professional development through training and education programs sponsored or supported by the finance agencies.

(b) The finance agencies may provide assistance for education and training that will enhance an employee's ability to perform current or prospective job duties and will benefit both the respective finance agency and the employee.

(c) Approval to participate in a training or education program is not automatic and is subject to eligibility of individual employees as established in the respective finance agency's policy, and the availability of funds within the respective finance agency's budget.

(d) The employee training and education program for the finance agencies may include one or more of the following:

(1) agency-sponsored training provided in-house or by contract;

(2) seminars and conferences;

(3) technical or professional certifications and licenses; or

(4) reimbursement for tuition, fees and required course materials.

(e) The finance agencies will develop and maintain policies for administering the employee training and education program of each respective finance agency. These policies will include:

(1) eligibility requirements for participation;

(2) designation of appropriate level of approval for participation; and

(3) obligations of program participants.

(f) Approval to participate in any portion of a finance agency's training and education program will not in any way affect an employee's at-will status.

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 August 15, 2014.

TRD-201403852

Catherine Reyer

General Counsel, Texas Department of Banking

Finance Commission of Texas

Proposed date of adoption: October 17, 2014

For further information, please call: (512) 475-1300



## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 TAC Chapter 80, §§80.3, 80.32, 80.36, 80.40, 80.41, 80.90 and 80.93 relating to the regulation of the manufactured housing program. The rules are revised to comply with House Bill 944 and House Bill (HB) 3361 (83rd Legislature, 2013 regular session) that amends the Manufactured Housing Standards Act and for clarification purposes.

Section 80.3(a): The retailer's branch location license and re-builder's license fees are removed and a fee for reprinted licenses is added to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 regular session).

Section 80.3(c): Made a correction to the name of the Application for Statement of Ownership and Location.

Section 80.3(h): Changed rebuilder references to retailer to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 regular session).

Section 80.32(e): Reworded to remove rebuilder reference to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 regular session).

Section 80.32(r) and (s): Removed branch location reference to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 regular session).

Section 80.36: Changed rebuilder reference in title of section to retailer to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 regular session).

Section 80.36(b): Changed rebuilder reference in title of subsection to retailer to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 regular session).

Section 80.40(b): Removed rebuilder reference to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 regular session).

Section 80.41(e)(4): Added fingerprints and criminal history check rule to comply with amendments to the Manufactured

Housing Standards Act in HB 3361 (83rd Legislature, 2013 regular session).

Section 80.41(g): Added a rule for exemption of requiring a retailer's license for a one-time sale of up to three (3) manufactured homes in a 12-month period to comply with amendments to the Manufactured Housing Standards Act in HB 944 (83rd Legislature, 2013 regular session).

Section 80.90(c)(2)(A) and (B): Revised to allow the Department to correct an error on a Statement of Ownership and Location upon receipt of documentation deemed appropriate and approved by the Executive Director.

Section 80.93(b): Reworded to clarify the Tax Lien File Layout is located on the Department's website.

Figure: 10 TAC §80.93(b): The Tax Lien File Layout is not required by statute to be part of the rules. Removing the form from the rules will be more efficient when revisions to the form are necessary since revisions will no longer be delayed by going through the rulemaking process.

Section 80.93(d): Reworded from future tense to past tense in regards to tax liens prior to 2001 being disregarded that were recorded after June 18, 2005.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and to comply with the Manufactured Housing Standards Act.

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

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at [mhproposedrulecomments@tdhca.state.tx.us](mailto:mhproposedrulecomments@tdhca.state.tx.us). The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

#### SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

##### 10 TAC §80.3

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to

amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.3. *Fees.*

(a) License Fees and Renewal Fees:

- (1) \$850 for each manufacturer's plant license;
- (2) \$550 for each retailer's sales license;
- ~~{(3) \$550 for each retailer's branch location sales license;}~~
- ~~{(4) \$550 for each rebuilder's license;}~~
- ~~(3) [(5)] \$350 for each broker's license;~~
- ~~(4) [(6)] \$350 for each installer's license; [and]~~
- ~~(5) [(7)] \$200 for each salesperson's license; and[-]~~
- (6) \$25.00 for each reprint of a license.

(b) (No change.)

(c) Seal Fee: Except for an application by a tax appraiser or a tax assessor-collector, for which there is no fee, there is a fee of \$35 for the issuance of a Texas Seal for one manufactured home section. Any person who sells, exchanges, lease purchases, or offers for sale, exchange, or lease purchase one or more sections of used HUD-Code manufactured homes manufactured after June 15, 1976, that do not each have a HUD label affixed, or one or more sections of a used mobile home manufactured prior to June 15, 1976, that do not each have a Texas Seal affixed shall file an Application for Statement of Ownership and Location [application for statement and location] to the Department for a Texas Seal and issuance of an updated Statement of Ownership and Location. The application shall be accompanied by the seal fee of \$35 per section made payable to the Department.

(d) - (g) (No change.)

(h) There is a fee of \$200 for the plan review and inspection of a salvaged manufactured home which is to be rebuilt. The purpose of the inspection is to determine if the home is habitable as defined by §1201.453 of the Standards Act so that it may be designated for residential use.

(1) The fee and required notification shall be submitted in accordance with §80.36 of this chapter (relating to Retailer's Rebuilding [Rebuilder's] Responsibilities and Requirements).

(2) The retailer [rebuilder] shall also be charged for mileage and per diem incurred by Department personnel traveling to and from the location of the home.

(3) The Department shall invoice the retailer [rebuilder] for the charges incurred, and no Statement of Ownership and Location shall be issued until all charges and fees have been paid.

(i) - (n) (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 August 15, 2014.  
TRD-201403887

Joe A. Garcia  
Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: September 28, 2014  
For further information, please call: (512) 475-2206

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SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

**10 TAC §80.32, §80.36**

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.32. *Retailers' Responsibilities and Requirements.*

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

(e) For each home altered or rebuilt from salvage a retailer shall retain the documentation required for rebuilding a manufactured home that is declared salvaged [rebuilder].

(f) - (q) (No change.)

(r) At each licensed location[, including each branch location,] a retailer shall display their current license for that location and the current license of each salesperson who works from that location.

(s) At each licensed location[, including each branch location,] a retailer shall conspicuously display the Consumer Protection Information sign as set forth on the Department's website.

(t) - (v) (No change.)

§80.36. *Retailer's Rebuilding [Rebuilders'] Responsibilities and Requirements.*

(a) (No change.)

(b) The retailer [rebuilder] must:

(1) - (7) (No change.)

(c) - (d) (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 August 15, 2014.

TRD-201403888

Joe A. Garcia  
Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: September 28, 2014  
For further information, please call: (512) 475-2206

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SUBCHAPTER D. LICENSING

**10 TAC §80.40, §80.41**

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.40. *Security Requirements.*

(a) (No change.)

(b) Any other security provided for compliance with §1201.105 of the Standards Act, shall remain in place and subject to a control agreement in favor of the Department for two (2) years after the person ceases doing business as a manufacturer, retailer, broker[, ~~rebuilder~~], or installer, or until such later time as the director may determine that no claims exist against the other security. The Director may consent to the substitution of a bond or a different qualifying deposit for other security provided that in the event a bond is filed to replace the assigned security, the initial effective date of the bond is the same or prior to the date of the assignment of security.

(c) - (f) (No change.)

§80.41. *License Requirements.*

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

(e) License Application and Renewal.

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

(4) Fingerprints and Criminal History Check.

(A) Prior to initial application on or after September 1, 2013 or the first renewal of a license expiring on or after September 1, 2013, license applicants must submit a complete and legible set of fingerprints to a vendor approved by the Department of Public Safety, for the purpose of a criminal background check, which will be provided to the Department.

(B) The license applicant shall be responsible for the cost.

(f) (No change.)

(g) Exemption for Retailer's License Requirement.

(1) Application for Exemption of Retailer's License Requirement.

(A) A person requesting exemption from the Retailer's licensing requirement of §1201.101(b) of the Occupations Code, shall submit the required application outlining the circumstances under which they are requesting exemption from licensure.

(B) Applications should identify the HUD label or serial number(s) of the homes being sold under exemption.

(C) Applications will be processed within seven (7) business days after receipt of all required information.

(2) The circumstances under which this exemption is granted are:

(A) One-time sale of up to three (3) manufactured homes in a 12-month period as personal property;

(B) Non-profit entity transferring ownership of up to three (3) manufactured homes in a 12-month period;

(C) No other manufactured homes have been purchased and resold in the previous twelve (12) months, even with a previous exemption; and/or

(D) Other circumstances deemed appropriate by the Executive Director.

(3) Letter of Exemption.

(A) Once granted, a Letter of Exemption from licensure will be issued by the Executive Director to the applicant.

(B) Letter of Exemption is valid only for the manufactured home(s) specified.

(C) Letter of Exemption is valid only for twelve (12) months.

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 August 15, 2014.

TRD-201403889

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 28, 2014

For further information, please call: (512) 475-2206



## SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

### 10 TAC §80.90, §80.93

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.90. *Issuance of Statements of Ownership and Location.*

(a) - (b) (No change.)

(c) Corrections to Statements of Ownership and Location.

(1) If a correction is required as a result of a Department error, it will be corrected at no charge.

(2) If a correction is requested because of an error made by a party other than the Department, the correction will not be made until the Department receives the following:

(A) A complete corrected application for Statement of Ownership and Location; or ~~and~~

(B) Documentation deemed appropriate and approved by the Executive Director, pursuant to §1201.207(c) of the Standards Act. [Any necessary supporting documentation.]

(d) - (i) (No change.)

§80.93. *Recording Tax Liens on Manufactured Homes.*

(a) (No change.)

(b) Electronically filed tax liens and tax lien releases shall be filed with the Department using the required format as provided in the [following] Tax Lien File Layout set forth on the Department's website. No other format will be accepted for electronic filing of tax liens. [Figure: 10 TAC §80.93(b)]

(c) (No change.)

(d) For tax liens recorded after June 18, 2005, but prior to the rules that were effective on January 29, 2006, those tax liens relating to tax years prior to 2001 were [will be] disregarded and will not be treated as having been recorded.

(e) (No change.)

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

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TRD-201403890

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 28, 2014

For further information, please call: (512) 475-2206



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 3. OIL AND GAS DIVISION

##### 16 TAC §3.9, §3.46

The Railroad Commission of Texas (Commission) proposes amendments to §3.9 and §3.46, relating to Disposal Wells, and Fluid Injection into Productive Reservoirs, to incorporate requirements related to seismic events for disposal wells.

The United States Environmental Protection Agency estimates that there are 144,000 Class II injection wells in the United States. The Commission has permitted over 50,000 Class II injection wells in Texas since the 1930s. While few earthquakes have been documented over the past several decades relative to the large number of disposal wells in operation, seismic events have infrequently occurred in areas where there is coincident oil and gas activity. Therefore, the Commission proposes these rule amendments in order to require additional permit application information such as logs, geologic cross-sections, and/or structure maps, for an injection well in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Such conditions may include, but are not limited to, complex geology, proximity of the baserock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the United States Geological Survey (USGS). The Commission also proposes these amendments to clarify that it has the authority to modify, suspend, or terminate a permit if fluids are not confined to the injection interval.

The Commission proposes amendments to §3.9(3) to add new subparagraph (B) to state that the applicant shall include with the application for a disposal well permit under this section the

results of a review of information from the USGS regarding the locations of any historical seismic events within the estimated radius of the 10-year, five pounds per square inch (psi) pressure front boundary of the proposed disposal well location. A pressure front is the zone of elevated pressure that is created by the injection of fluids into the subsurface. A 10-year, five psi pressure front boundary is the boundary of increased pressure of five psi after 10 years of injection at the maximum requested permit injection volume.

The USGS has the ability to detect and locate all seismic events larger than magnitude 2.0 throughout the continental United States. This ability makes the USGS the *de facto* source of seismic event location in the United States. The USGS maintains an online, accessible data base of seismic events in the United States from 1973 to the present. Applicants for a disposal well permit under §3.9 or §3.46 as amended by this proposal would be required to access the USGS earthquake search tool at <http://earthquake.usgs.gov/earthquakes/search/> in order to retrieve data regarding the locations of historical seismic events within the estimated 10-year, five psi pressure front boundary. Figure 1 shows an example with the following input values: (1) a start date and time of 1973-01-01 00:00:00; (2) a minimum magnitude of 2; (3) the center latitude and center longitude of the proposed disposal well location; and (4) an outside radius of 3.2 kilometers (two miles).

Figure 1: 16 TAC Chapter 3--Preamble

The list and map result (after zooming in on the region of interest) as shown in Figure 2 will be presented to the applicant for inclusion in the application.

Figure 2: 16 TAC Chapter 3--Preamble

The Commission proposes new §3.9(3)(C) to state that the Commission may require an applicant for a disposal well permit to provide the Commission with additional information, such as logs, geologic cross-sections, and/or structure maps, to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Conditions that may increase the risk that fluids will not be confined to the injection interval may include, but are not limited to, complex geology, proximity of the baserock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS required in §3.9(3)(B).

The Commission proposes to amend §3.9(6) to amend subparagraph (A) to include injection that is suspected of or shown to be causing seismic activity to the list of reasons for which the Commission may modify, suspend, or terminate a permit for saltwater or other oil and gas waste disposal for just cause after notice and opportunity for hearing.

The Commission proposes to amend §3.9(11) to state that the Commission may require more frequent monitoring and monitoring reporting to the Commission of the injection pressure and injection rate. The Commission also proposes to amend §3.9(11)(B) to correct a typographical error in the existing rule.

The Commission proposes to amend §3.46 to incorporate similar language for disposal wells that are permitted under §3.46. Under §3.46, the Commission regulates injection into productive formations for either enhanced recovery or for disposal. The new language relating to seismic activity would apply only to those wells permitted under §3.46 for disposal purposes.

The Commission proposes to amend §3.46(b)(1) to add new subparagraphs (C) and (D). Proposed new subparagraph (C) would require the applicant to include with the permit application for injection for the purpose of disposal under this section the results of a review of information from the USGS regarding the locations of any historical seismic events within the boundary of the 10-year, five psi pressure front for the proposed disposal well location.

Proposed new §3.46(b)(1)(D) would state that the Commission may require an applicant for a disposal well permit under this section to provide the Commission with additional information such as logs, geologic cross-sections, and/or structure maps, to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Such conditions may include, but are not limited to, complex geology, proximity of the baserock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS required in §3.46(b)(1)(C).

The Commission proposes to add §3.46(d)(1)(F) to include injection that is suspected of or shown to be causing seismic activity to the list of reasons for which the Commission may modify, suspend, or terminate a permit for just cause after notice and opportunity for hearing.

The Commission proposes to amend §3.46(i)(1) and (2) to state that the Commission may require more frequent monitoring and monitoring reporting to the Commission of the injection pressure and injection rate.

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no foreseeable implications relating to cost or revenues of state governments or local governments as a result of enforcing or administering the amendments. Commission staff responsible for permitting of disposal wells will review information relating to historical seismic activity required to be submitted with each disposal well application; however, these additional duties will be performed by existing personnel and within current budget constraints, resulting in no additional costs to the agency.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect, the public benefit will be the Commission's evaluation of information regarding seismic activity within the area of a proposed or existing disposal well, and consideration of other factors related to the prevention of pollution of surface and subsurface waters of the state and promotion of safety in accordance with Texas Natural Resources Code, §85.042 and §91.101.

The proposed rule amendments would include a new requirement that an applicant for a disposal well determine the radius of the 10-year, five psi pressure front boundary from the proposed disposal well location and use that radius to retrieve information from the USGS regarding the locations of any historical seismic events within that radius. However, the applicant should already have the information necessary to perform the pressure front calculations. Therefore, Ms. Savage estimates that the performance of the pressure front calculation would cost approximately \$200. Once the 10-year, five psi radius has been determined through calculation, Ms. Savage estimates that the cost of inputting the information into the USGS website to retrieve seismic history, printing out that information, and attaching the information to the application would be no more than \$100 for

each application. The proposed rule amendments also clarify that the Commission can require increased reporting of injection volumes in certain very limited circumstances. Operators are already required to collect and maintain this information under current regulations, however, and the cost of submitting this information to the Commission on a more frequent basis is negligible. Therefore, Ms. Savage estimates that the probable economic costs to persons required to comply with these proposed rule amendments for the first five years they are in effect would be approximately an additional \$300 to the cost of each application for a disposal well permit. The Commission notes that this requirement is only for disposal well permit applications, not permit applications for wells to be used for the purpose of enhanced recovery.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses subject to the proposed rule and project the economic impact of the rule on small businesses. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. If consistent with the health, safety, and environmental and economic welfare of the state, the analysis must consider the use of regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons who drill and complete wells under the jurisdiction of the Railroad Commission will be classified as small businesses or micro-businesses, as those terms are defined. The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas wells fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.001. Any number of these businesses could be affected under the proposed amendments.

Based on the information available to the Commission regarding oil and gas operators, Ms. Savage has concluded that, of the businesses that could be affected by the proposed amendments, it is likely that many would be classified as small businesses, and possible that some could be classified as micro-businesses, as



those terms are defined in Texas Government Code, §2006.001. The proposed amendments would add requirements that may result in increased costs for applying for and operating a disposal or injection well. Small and micro-businesses represent a large percentage of entities operating in the crude oil and natural gas extraction industry. As such, the rule amendments are likely to affect a significant number of small and micro-businesses. However, Ms. Savage anticipates that the adverse impact to any one applicant (estimated to be approximately an additional \$300 for the cost of each application for a disposal well permit, as described above) will be relatively small compared to the overall costs associated with disposal well facilities and operating costs. Also, the Commission takes the position that a prudent operator would perform pressure front calculations, which comprise the bulk of the estimated costs of compliance, as part of its best management practices to ensure fluid confinement to the permitted injection interval and ensure public safety. Moreover, the Commission has determined that, because the purpose of the proposed amendments is to improve the safety of disposal well operations and prevent pollution of surface and subsurface waters, it is not feasible to reduce any economic impact of the rules on small or micro-businesses without compromising those efforts. Public safety and pollution prevention are essential to the health, safety and environmental and economic welfare of the state, regardless of whether the operator subject of this regulation is a large corporation, a small business, a micro-business, or an individual. Because the Commission has determined that it is consistent with the health, safety, and environmental and economic welfare of the state to have all persons engaged in the operation of disposal well facilities conform to the same safety standards, the regulatory flexibility analysis described in Texas Government Code §2006.002, is not required.

Pursuant to Texas Government Code, §2001.022, the Commission has determined that the proposed amendments will not have an adverse impact on a local economy; therefore, the Commission has not prepared a local employment impact statement as required under that statute.

Further, the Commission has determined that the proposed amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis pursuant to section is not required.

The Commission reviewed the proposed amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings](http://www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). Comments should refer to O&G Docket No. 20-0290951 and will be accepted until 12:00 p.m. (noon) on Monday, September 29, 2014, which is 31 days after publication in the *Texas Register*. The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site at least two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to

review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/legal/rules/proposed-rules](http://www.rrc.state.tx.us/legal/rules/proposed-rules).

The Commission proposes amendments to §3.9 and §3.46, pursuant to Texas Water Code, §26.131, which gives the Commission jurisdiction over pollution of surface or subsurface waters from oil and gas exploration, development, and production activities; Texas Water Code, Chapter 27, which authorizes the Commission to adopt and enforce rules relating to injection wells; Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission under Texas Natural Resources Code, §81.051; Texas Natural Resources Code, §85.042(b), which provides the Commission with the authority to, when necessary, make and enforce rules either general in their nature or applicable to particular fields for the prevention of actual waste of oil or operations in the field dangerous to life or property; Texas Natural Resources Code, §85.201, which authorizes the Commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; Texas Natural Resources Code, §85.202, which authorizes the Commission to adopt rules to prevent waste of oil and gas in drilling and producing operations; Texas Natural Resources Code, §91.101, which authorizes the Commission, in order to prevent pollution of surface water or subsurface water in the state, to adopt rules relating to the various oilfield operations, including activities associated with the drilling of injection water source wells which penetrate the base of usable quality water, and the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste; and Texas Natural Resources Code, §91.602, which authorizes the Commission, in order to protect human health and the environment, to adopt and enforce rules relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

Texas Water Code, §26.131, and Chapter 27; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602 are affected by the proposed amendments.

Statutory authority: Texas Water Code, §26.131, and Chapter 27; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Cross-reference to statute: Texas Water Code, §26.131, and Chapter 27; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602.

Issued in Austin, Texas on August 12, 2014.

### §3.9. *Disposal Wells.*

Any person who disposes of saltwater or other oil and gas waste by injection into a porous formation not productive of oil, gas, or geothermal resources shall be responsible for complying with this section, Texas Water Code, Chapter 27, and Title 3 of the Natural Resources Code.

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

(3) Application.

(A) The application to dispose of saltwater or other oil and gas waste by injection into a porous formation not productive of oil, gas, or geothermal resources shall be filed with the commission in

Austin accompanied by the prescribed fee. On the same date, one copy shall be filed with the appropriate district office.

(B) The applicant for a disposal well permit under this section shall include with the permit application the results of a review of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within the estimated radius of the 10-year, five pounds per square inch (psi) pressure front boundary of the proposed disposal well location. The pressure front is the zone of elevated pressure that is created by the injection of fluids into the subsurface.

(C) The commission may require an applicant for a disposal well permit under this section to provide the commission with additional information such as logs, geologic cross-sections, and/or structure maps, to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Such conditions may include, but are not limited to, complex geology, proximity of the baserock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS.

(4) - (5) (No change.)

(6) Subsequent commission action.

(A) A permit for saltwater or other oil and gas waste disposal may be modified, suspended, or terminated by the commission for just cause after notice and opportunity for hearing, if:

(i) a material change of conditions occurs in the operation or completion of the disposal well, or there are material changes in the information originally furnished;

(ii) freshwater is likely to be polluted as a result of continued operation of the well;

(iii) there are substantial violations of the terms and provisions of the permit or of commission rules;

(iv) the applicant has misrepresented any material facts during the permit issuance process;

(v) injected fluids are escaping from the permitted disposal zone; [øf]

(vi) injection is suspected of or shown to be causing seismic activity; or

(vii) [(vi)] waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations.

(B) - (C) (No change.)

(7) - (10) (No change.)

(11) Monitoring and reporting.

(A) The operator shall monitor the injection pressure and injection rate of each disposal well on at least a monthly basis, or on a more frequent basis as required by the commission under paragraph (3)(C) of this section.

(B) The results of the monitoring shall be reported annually to the commission on the prescribed form, or on a more frequent basis as required by the commission under paragraph (3)(C) of this section [fom].

(C) All monitoring records shall be retained by the operator for at least five years.

(D) The operator shall report to the appropriate District Office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well.

(12) - (14) (No change.)

§3.46. *Fluid Injection into Productive Reservoirs.*

(a) (No change.)

(b) Filing of application.

(1) Application.

(A) An application to conduct fluid injection operations in a reservoir productive of oil, gas, or geothermal resources shall be filed in Austin on the form prescribed by the commission accompanied by the prescribed fee. On the same date, one copy shall be filed with the appropriate district office. The form shall be executed by a party having knowledge of the facts entered on the form.

(B) The applicant shall file the freshwater injection data form if fresh water is to be injected.

(C) The applicant for a disposal well permit under this section shall include with the permit application the results of a review of information from the United States Geological Survey (USGS) regarding the locations of any historical seismic events within the estimated radius of the 10-year, five pounds per square inch (psi) pressure front boundary of the proposed disposal well location. The pressure front is the zone of elevated pressure that is created by the injection of fluids into the subsurface.

(D) The commission may require an applicant for a disposal well permit under this section to provide the commission with additional information such as logs, geologic cross-sections, and/or structure maps, to demonstrate that fluids will be confined if the well is to be located in an area where conditions exist that may increase the risk that fluids will not be confined to the injection interval. Such conditions may include, but are not limited to, complex geology, proximity of the baserock to the injection interval, transmissive faults, and/or a history of seismic events in the area as demonstrated by information available from the USGS.

(2) (No change.)

(c) (No change.)

(d) Subsequent commission action.

(1) An injection well permit may be modified, suspended, or terminated by the commission for just cause after notice and opportunity for hearing, if:

(A) a material change of conditions occurs in the operation or completion of the injection well, or there are material changes in the information originally furnished;

(B) fresh water is likely to be polluted as a result of continued operation of the well;

(C) there are substantial violations of the terms and provisions of the permit or of commission rules;

(D) the applicant has misrepresented any material facts during the permit issuance process;

(E) injected fluids are escaping from the permitted injection zone; [øf]

(F) for a disposal well permit under this section, injection is suspected of or shown to be causing seismic activity; or

(G) [(F)] waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations.

(2) - (3) (No change.)

(e) - (h) (No change.)

(i) Monitoring and reporting.

(1) The operator shall monitor the injection pressure and injection rate of each injection well on at least a monthly basis, or on a more frequent basis for a disposal well permitted under this section as required by the commission under subsection (b)(1)(D) of this section.

(2) The results of the monitoring shall be reported annually, or on a more frequent basis for a disposal well permitted under this section as required by the commission under subsection (b)(1)(D) of this section, to the commission on the prescribed form.

(3) All monitoring records shall be retained by the operator for at least five years.

(4) The operator shall report to the appropriate District Office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well.

(j) - (n) (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 August 12, 2014.

TRD-201403794

Cristina Martinez Self

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: September 28, 2014

For further information, please call: (512) 475-1295



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION

##### SUBCHAPTER N. HISTORICALLY

##### UNDERUTILIZED BUSINESSES

###### 28 TAC §1.1601

The Texas Department of Insurance proposes an amendment to 28 TAC §1.1601, concerning Historically Underutilized Businesses. The proposed amendment updates the department's rule to incorporate by reference the rules adopted by the Texas Comptroller of Public Accounts for historically underutilized businesses, as required by Texas Government Code §2161.003.

EXPLANATION. The department originally adopted §1.1601 on September 26, 2000, to implement Government Code §2161.003, which adopted by reference General Services Commission rules regarding historically underutilized businesses for the purchase of goods and services paid for with appropriated money. As originally adopted, §1.1601 was located in 1 TAC §§111.11 - 111.28.

The General Services Commission was abolished in 2001 by SB 311, 77th Legislature, Regular Session, and its duties and powers were transferred to the Texas Building and Procure-

ment Commission. The department's rules remained in 1 TAC §§111.11 - 111.28.

In 2007, the Legislature transferred some of the duties and powers of the Texas Building and Procurement Commission to the comptroller with House Bill 3560, 80th Legislature, Regular Session. The authority to adopt rules addressing historically underutilized businesses under Texas Government Code §2161.0012 was included in this transfer.

Following the transfer of duties and powers of the Texas Building and Procurement Commission to the comptroller, the Texas secretary of state transferred and reorganized 1 TAC §§111.11 - 111.28, relocating the sections to 34 TAC §§20.11 - 20.28. The transfer and reorganization occurred on July 6, 2007, and is located at 32 TexReg 4237.

The transfer and reorganization resulted in new numbering of the rules addressing historically underutilized businesses, but it was not a substantive change to the rules themselves. The secretary of state transferred and reorganized the rules under Government Code §2002.058, and under HB 3560, the rules were to continue in effect until superseded by an act of the comptroller. This did not constitute a rulemaking procedure under Government Code Chapter 2001. The comptroller updated the rules addressing historically underutilized businesses and added an additional section in 2011. These updated rules addressing historically underutilized businesses remain at 34 TAC §§20.10 - 20.28.

The proposed amendment does not make a substantive change to the adoption by reference of the comptroller's rules addressing historically underutilized businesses. Rather, the purpose of the proposed amendment is for clarity and ease of locating the most current version of the rules addressing historically underutilized businesses the department adopted by reference.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mike Powers, procurement and general services director, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Powers has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be ensuring that the department's rules conform to Government Code §2161.003 by including the updated reference and clearly adopting by reference the comptroller's historically underutilized business rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The department has determined that amended §1.1601 will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses. Government Code §2161.003 applies equally to all state agencies and requires that all state agencies adopt the comptroller's historically underutilized business rules by reference. In addition, this proposed amendment only updates the citation in the department's rule and does not make a change in the department's historically underutilized business policy or procedure. As a result, and in compliance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment or request a hearing on this proposal, you may do so no later than 5:00 p.m., Central time, on September 29, 2014. The department requires two copies of your comments or hearing request. Send one copy by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chief-clerk@tdi.texas.gov. Send the other copy by mail to the Texas Department of Insurance, Procurement and General Services, Mail Code 108-1A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to mike.powers@tdi.texas.gov. A hearing request must be on a separate page from any written comments.

STATUTORY AUTHORITY. TDI proposes amended §1.1601 under Government Code §2161.003 and Insurance Code §36.001. Section 2161.003 of the Government Code requires that the Texas Department of Insurance adopt the comptroller's rules for historically underutilized businesses. Section 36.001 of the Insurance Code provides that the commissioner of insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

CROSS-REFERENCE TO STATUTE. Section 1.610 implements Government Code §2161.003.

§1.1601. *Historically Underutilized Businesses.*

The Texas Department of Insurance adopts [by reference] the rules of the Comptroller of Public Accounts relating to the Historically Underutilized Business Program at 34 TAC Chapter 20, Subchapter B [promulgated by the General Services Commission regarding historically underutilized businesses, which are set forth in 1 TAC §§111.11-111.28].

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 August 14, 2014.

TRD-201403834

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: September 28, 2014

For further information, please call: (512) 463-6327



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

## SUBCHAPTER A. BREATH ALCOHOL TESTING REGULATIONS

### 37 TAC §§19.1 - 19.7

The Texas Department of Public Safety (the department) proposes amendments to §19.1 and §19.2 and proposes new §§19.3 - 19.7, concerning Breath Alcohol Testing Regulations. These amendments and new sections are necessary to reorganize, update, and clarify rules governing the Breath Alcohol Testing Regulations.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be increased efficiency and clarification of the rules thereby minimizing misinterpretation.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to Randall Beaty, Crime Laboratory Service, Texas Department of Public Safety, P.O. Box 4087 (MSC 0570), Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §724.016, which authorizes the department to establish rules approving satisfactory analytical methods; and §724.003, which authorizes the department to adopt rules to administer Chapter 724.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 724 are affected by this proposal.

#### §19.1. *Definitions.*

The following words and phrases, when used in this chapter, shall have the [following] meanings as detailed in this section, unless the context shall clearly indicate otherwise.

(1) Alcohol--Ethyl alcohol, sometimes referred to as grain alcohol or ethanol.

(2) Approval--Meeting and maintaining the requirements set forth in this subchapter [title] for approval.

~~(3) Approved breath alcohol testing program--A breath alcohol testing program meeting and maintaining the provisions stated in §19.4 of this title (relating to Approval of Techniques, Methods, and Programs).~~

(3) [(4)] Approved course of instruction--A school, college, agency, institution, or laboratory meeting the requirements stated in §19.6 [§19.7] of this title (relating to Approval of Courses of Instruction).

(4) [(5)] Breath alcohol test (breath alcohol analysis)--The analysis of a subject's breath specimen(s) to determine the alcohol concentration(s) thereof.

(5) [(6)] Certification--Meeting and maintaining the requirements set forth in this subchapter [title] for certification.

(6) [(7)] Certified operator--An individual meeting and maintaining the requirements stated in §19.4 [§19.5] of this title (relating to Operator Certification).

(7) [(8)] Conviction--An adjudicated verdict of guilty or an order of deferred adjudication by a court of competent jurisdiction.

(8) [(9)] Department--The unmodified word "department" in this subchapter [title] refers to the Texas Department of Public Safety.

(9) [(10)] Inactivation--The voluntary or temporary discontinuance of certification.

(10) [(11)] Instrument(s)--The device(s) which measure or quantitate the breath alcohol concentration pursuant to §19.2 of this title (relating to Instrument Certification).

(11) [(12)] Office of the Scientific Director (OSD)--The scientific director and his staff.

~~[(13) Predicted value--The known value of the reference sample.]~~

(12) [(14)] Proficiency test--A method of evaluation [test administered] at the direction of a technical supervisor or designated representative of the scientific director by which the knowledge, skills, and abilities of an operator to operate breath alcohol testing equipment can be assessed [Scientific Director to establish and/or ascertain the competency of an operator to obtain valid results on breath test instruments].

(13) [(15)] Public information and demonstration--The public display and exhibition of certified evidential breath testing equipment.

(14) [(16)] Recertification--A process to make certification current.

(15) Reference system--The equipment designed to input any combination of reference material(s) or standard(s) with a known quantity into an instrument for analysis as a measurement standard.

~~[(17) Reference sample device--An apparatus or device designed to provide a reference sample or analytical test standard.]~~

(16) [(18)] Renewal of current certification--The continuance of active certification by meeting the requirements stated in §19.4(b) [§19.5(b)] of this title (relating to Operator Certification).

(17) [(19)] Reports and records--The data and documents pertinent to this subchapter [title].

(18) [(20)] Scientific director--The individual or his designee responsible for the implementation, administration and enforcement of the Texas breath alcohol testing regulations.

(19) [(21)] Security--The safeguard of certified instruments at testing locations.

(20) [(22)] Site location--The physical site of the breath alcohol testing instrument and associated equipment [reference sample device].

(21) [(23)] Suspension--The termination or revocation of certification.

~~[(24) System blank analysis--An analysis of ambient air, free of alcohol and other interfering substances, that yields a result of 0.000.]~~

(22) [(25)] Technical supervisor and technical supervision--An individual meeting the minimum requirements set forth in §19.5 [§19.6] of this title (relating to Technical Supervisor Certification) and the responsibilities of such.

#### §19.2. Instrument Certification.

(a) The Office of the Scientific Director, Alcohol Testing Program, Texas Department of Public Safety (hereinafter referred to as the scientific director) shall approve and certify all breath test instruments to be used for evidential purposes.

(1) The scientific director will establish and maintain a list of approved instruments by manufacturer brand or model designation for use in the state.

(2) A manufacturer or designated representative desiring approval of an instrument not on the approved list may submit an instrument to the scientific director. Examination and evaluation of the instrument to determine if it meets the criteria for approval or certification as an evidential instrument will be done at the discretion of the scientific director. Costs associated with such a submission will be done at the expense of the submitting entity.

(b) In order to be approved each instrument must meet the [following] criteria as detailed in this subsection:

(1) Expired breath specimens shall be analyzed [Breath specimens for analysis shall be essentially alveolar or deep lung air in composition].

(2) The instrument shall incorporate a reference system, the result of which must agree within plus or minus 0.01g/210L of the nominal value [analyze a reference sample or analytical test standard the result of which must agree within plus or minus 0.01g/210L of the predicted value] or such limits as set by the scientific director.

(3) The specificity of the procedure shall be adequate and appropriate for the analyses of breath specimens for the determination of alcohol concentration for law enforcement.

(4) Any other tests deemed necessary by the scientific director to correctly and adequately evaluate the instrument to give correct results in routine breath alcohol testing and be practical and reliable for law enforcement purposes.

(c) Upon proof of compliance with subsection (b) of this section the instrument will be placed on the list of approved instruments.

(1) Inclusion on the scientific director's list of approved instruments will verify that the instrument by manufacturer brand or model designation meets the criteria of subsection (b) of this section.

(2) The scientific director may, for cause, rescind approval of and remove an instrument by manufacturer brand or model designation from the approved list.

(d) The technical supervisor shall determine if a specific instrument by serial number is of the same manufacturer brand or model designation as is shown on the scientific director's approved list and meets the criteria for certification as stated in subsection (b)(2) of this section and when required, shall provide direct testimony or ~~written~~ affidavit of this information.

(e) The scientific director, or a designated representative or technical supervisor, may, for cause, remove a specific instrument by serial number from evidential testing and withdraw certification thereof.

(f) Certified evidential instruments should not ordinarily be used for public information programs. Individuals with appropriate breath alcohol testing technical expertise, such as a certified technical supervisor, should disseminate this type of public information.

#### §19.3. Techniques and Methods.

(a) All breath alcohol testing techniques and methods shall meet, but not be limited to, the requirements as detailed in this subsection:

(1) a period during which an operator is required to remain in the presence of the subject. An operator shall remain in the continuous presence of the subject at least 15 minutes immediately before the test and should exercise reasonable care to ensure that the subject does not place any substances in the mouth. Direct observation is not necessary to ensure the accuracy of the test result;

(2) the breath alcohol testing instrument must be operated by a certified operator or technical supervisor and only certified personnel will have access to the instrument;

(3) a reference system used in conjunction with subject analysis, the results of which must agree with the nominal value within plus or minus 0.01g/210 L, or such limits as set by the scientific director;

(4) all analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210 L);

(5) maintenance of any specified records designated by the scientific director;

(6) supervision of certified operators and testing techniques by a technical supervisor meeting the qualifications set forth in §19.5 of this title (relating to Technical Supervisor Certification);

(7) designation that the instrumentation will be used only:

(A) for testing subjects suspected of violating any statute or codified rule that defines intoxication in terms of alcohol concentration; and

(B) in compliance with §19.4(b), (c), and (e) of this title (relating to Operator Certification).

(b) The scientific director or a designated representative may at any time make an inspection of an evidential breath alcohol testing facility or technical supervisor laboratory to ensure compliance with this subchapter.

(c) Technical supervisors, when required, shall provide expert testimony by direct testimony or by affidavit concerning the approval of techniques and methods under their supervision.

#### §19.4. Operator Certification.

(a) Certification.

(1) Prior to certification an applicant must establish proof of association, or pending association with: a law enforcement agency, or a laboratory, actively engaged in evidential breath alcohol testing, or a certified school of instruction in Texas or proof of pending association upon receipt of certification.

(2) Conviction history:

(A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified operator;

(B) persons convicted of a Class B misdemeanor within the last 10 years shall not be eligible to be a certified operator;

(C) persons receiving a driver license suspension or a denial to issue a driver license for refusal to submit to a chemical test as per the provisions of Texas Transportation Code, Chapter 724 or Chapter 522 within the last 5 years shall not be eligible to be a certified operator.

(3) Prior to initial certification as a breath test operator, an applicant must successfully complete a course of instruction meeting the criteria set forth in §19.6 of this title (relating to Approval of Courses of Instruction).

(4) Prior to certification as an operator of a breath alcohol testing instrument, an applicant must satisfactorily meet the criteria, set forth by the scientific director or a designated representative, as detailed in this paragraph:

(A) a written examination;

(B) establish competency in the operation of the instrument on which the operator is to be certified and the proper completion of all required reports and records;

(C) failure of the written examination and/or failure to establish competency in the operation of the instrument will cause the applicant to be ineligible for reexamination for a period of 30 days. A subsequent failure of either criteria will require that the candidate attend and satisfactorily complete the initial course of instruction for certification of a breath test operator.

(5) Upon successful completion of the requirements for certification, the scientific director will issue the individual an operator certificate for a period of time designated by the scientific director or until the next examination for renewal unless inactivated or suspended.

(6) If an operator is certified to operate a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the scientific director may waive portions of this section and only require instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(b) Renewal of current certification. In order to maintain current certification, the operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:

(1) The proper completion of any combination of five subject and/or practice tests as defined in the Texas Breath Alcohol Test Program Operator Manual since the last issuance of an operator certificate per the provisions of subsection (a)(5) or (b)(5) of this section.

(2) The satisfactory biennial completion of a course of instruction, the contents of which should include, but not be limited to, topics such as:

(A) a brief review of the theory and operation of the breath alcohol test equipment;

(B) a detailed review of the breath alcohol analysis and reporting procedures;

(C) a review of procedural updates resulting from recent court decisions and legislation;

(D) a review of current issues in the field of breath alcohol testing;

(E) a written examination

(3) Renewal of certification will be denied and current certification will be inactivated in accordance with subsection (d) of this section when the operator:

(A) fails to properly complete a minimum of five tests in accordance with subsection (b)(1) of this section; or

(B) fails the written examination.

(4) An operator who fails renewal will be given the reason for failure and is not eligible to be reexamined for a period of 30 days. Reexamination will be pursuant to subsection (a)(4) of this section. A resulting failure will require that the operator attend and satisfactorily complete the initial course of instruction for certification of a breath test operator in order to regain current certification.

(5) Upon successful completion of the requirements for renewal of certification, the scientific director will issue the individual an operator certificate for a period of time designated by the scientific director or until next examination for renewal unless inactivated or suspended.

(c) Proficiency requirements.

(1) The scientific director, or a designated representative, or the operator's technical supervisor may at any time require an operator to demonstrate proficiency in the proper operation of the instrument and analysis reporting procedures.

(2) It is the responsibility of the operator to maintain proficiency.

(3) Failure to pass a proficiency test will result in the suspension of the operator's certification for 30 days.

(d) Certification inactivation and suspension.

(1) Inactivation may be initiated by the certified operator in case of voluntary surrender of certification or by anyone with the authority to suspend. The technical supervisor or operator shall, without delay, notify the office of the scientific director of any such inactivation. Challenges to involuntary inactivation will be resolved at the discretion of the scientific director. Inactivation will be utilized, but not limited to, as provided in this paragraph:

(A) an operator transfers to a position where certification as a breath test operator is no longer desired;

(B) an operator fails to renew certification prior to its expiration;

(C) an operator terminates employment under which certification was acquired; or

(D) administrative program control to safeguard the scientific integrity of the breath alcohol testing program.

(2) Suspension of certification will be utilized when the scientific director and/or a technical supervisor determines an operator intentionally or purposefully disregards or violates these regulations, or commits a violation of law relating to breath testing, or falsely or deceitfully obtains certification, or for malfeasance or noncompliance with any provision of these regulations, or when in the technical super-

visor's judgment the operator's performance is unreliable or the operator is incompetent.

(A) The technical supervisor shall, without delay, notify the scientific director in writing of any such suspension and furnish a copy of such notice to the suspended operator and the operator's appropriate supervisor or department head. The suspended operator shall not be permitted to operate the instrument until such time as certification has been restored pursuant to subsection (e) of this section.

(B) Upon receipt of the notification of suspension, the scientific director shall initiate, if not previously completed, an inquiry culminating in sustaining the suspension or setting aside the suspension.

(C) The minimum period of suspension as determined by the scientific director will be for a period of time not less than 30 days. The technical supervisor or a designated representative of the scientific director may recommend a specific period of suspension to the scientific director.

(D) Due to the immediate nature and the procedure for appeal, the individual initiating the suspension shall not be required to confer, consult, or obtain permission or approval from anyone prior to the initiation of the suspension. However, all suspensions must be consistent with procedures outlined in this subchapter.

(3) An operator whose certification has been suspended may appeal such action in writing to the assistant director of the major division responsible for crime laboratory activities, Texas Department of Public Safety, who will determine if the action of the scientific director will be affirmed or set aside. The assistant director may reinstate the certification under such conditions as deemed necessary and notify the scientific director in writing.

(e) Recertification. Certification that has been inactivated or suspended must be regained before evidential analyses may be administered. Recertification shall take place as detailed in this subsection:

(1) recertification after inactivation for the failure to complete the renewal process prior to the expiration of current certification will be pursuant to subsection (a)(4) of this section;

(2) recertification after inactivation or suspension will be pursuant to subsection (a)(4) of this section;

(3) recertification after a change in instrumentation or testing methodologies will be at the discretion of the scientific director, will be pursuant to subsection (a)(6) of this section.

(f) Certificate. The issuance of a certificate to the breath test operator shall be evidence that the operator has met the requirements for initial certification and/or renewal of certification.

(g) Verification. The technical supervisor, when required, shall verify all aspects of operator certification, by direct testimony or by affidavit.

#### §19.5. Technical Supervisor Certification.

(a) The primary function of the technical supervisor is to provide the technical, administrative and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to ensure the breath alcohol testing program's acceptability for evidential purposes. The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of

forms and records, and operator's compliance with the provisions stated in these regulations;

(2) supervision of certified instrumentation and affiliated equipment;

(3) supervision of data gathered for initial certification and/or approval of individual instruments;

(4) supervision of techniques and methods, maintaining scientific integrity and upholding these regulations;

(5) selection and supervision of a site location as it applies to security and technical suitability for testing;

(6) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment;

(7) all technical, administrative and regulatory aspects of breath alcohol testing; and

(8) expert testimony by direct testimony or by affidavit concerning all aspects of breath alcohol testing.

(b) The minimum qualifications for certification as a technical supervisor are:

(1) a baccalaureate degree from an accredited college or university with a major in chemistry, or as an alternative, a major in another scientific field with sufficient semester hours in chemistry or other qualifications as determined by the scientific director (for the purposes of these regulations, sufficient hours in chemistry shall be defined as successful completion of the equivalent of a minimum of 18 semester hours of chemistry, no more than 8 of which may be freshman level.);

(2) satisfactory completion of a course of instruction as set forth in §19.4(a)(3) of this title (relating to Operator Certification);

(3) satisfactory completion of technical supervisor training approved by the scientific director, including, but not limited to:

(A) advanced survey of current information concerning alcohol and its effects on the human body;

(B) operational principles and theories applicable to the program;

(C) instrument operations, maintenance, repair and calibration;

(D) legal aspects of breath alcohol analysis;

(E) principles of instruction;

(4) knowledge and understanding of the scientific theory and principles as to the operation of the instrument and associated equipment;

(5) prior to certification, a technical supervisor candidate must establish proof of association or pending association with an agency of laboratory actively engaged in evidential breath alcohol testing or with a course of instruction as set forth in §19.6 of this title (relating to Approval of Course of Instruction) upon receipt of certification. If the technical supervisor candidate or certified technical supervisor cannot establish such proof of association, certification will, at the discretion of the scientific director, be denied or inactivated;

(6) Conviction history:

(A) persons convicted of a felony or a Class A misdemeanor shall not be eligible to be a certified technical supervisor;

(B) persons convicted of a Class B misdemeanor within the last 10 years shall not be eligible to be a certified technical supervisor;

(C) persons receiving a driver license suspension or a denial to issue a driver license for refusal to submit to a chemical test as per the provisions of Texas Transportation Code, Chapter 724 or Chapter 522 within the last 5 years shall not be eligible to be a certified technical supervisor.

(c) Certification.

(1) Upon satisfactory proof to the scientific director by the applicant that the minimum qualifications set forth in subsection (b) of this section have been met, the scientific director will issue certification for a period of time designated by the scientific director unless inactivated or suspended.

(2) A certified technical supervisor is fully authorized to conduct evidential subject tests and is not required to maintain a separate certification as a breath test operator as set forth in §19.4 of this title (relating to Operator Certification).

(3) Technical supervisor certification may be voluntarily inactivated when it is no longer needed or inactivated at the discretion of the scientific director if the technical supervisor is no longer associated with an agency or laboratory actively engaged in evidential breath alcohol testing and/or with a course of instruction as set forth in §19.6 of this title (relating to Approval of Course of Instruction).

(4) Technical supervisor certification may be suspended only by the scientific director for malfeasance, incompetence, falsely or deceitfully obtaining certification, or failure to carry out the responsibilities set forth in this subchapter.

(5) A technical supervisor whose certification has been suspended may appeal such action in writing to the assistant director of the major division responsible for crime laboratory activities, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The assistant director may reinstate certification of the technical supervisor making such appeal under such conditions deemed necessary and notify the scientific director in writing.

(d) Certificate. The issuance of a certificate to the technical supervisor shall be evidence that the technical supervisor has met the requirements for certification.

(e) Renewal of current certification and recertification. In order to maintain current certification, the technical supervisor is required to renew certification prior to its expiration. The scientific director shall determine the minimum requirement for renewal of technical supervisor certification and for recertification after inactivation or suspension.

#### §19.6. Approval of Courses of Instruction.

(a) Any agency, laboratory, institution, school or college intending to offer a course of instruction for certified operators of evidential breath alcohol testing instruments, must have the course curriculum approved by the scientific director.

(b) The operator course must utilize the most current revision of the Texas Breath Alcohol Testing Program Operator Manual as the primary instructional text and contain, as a minimum, these areas of instruction:

(1) the effects of alcohol on the human body;

(2) the operational principles of the breath alcohol testing instrument to be used, including:

(A) a functional description of the testing method; and



(B) a detailed operational description of the method with demonstrations.

(3) legal aspects of breath alcohol testing;

(4) supplemental information which is to include nomenclature appropriate to the field of breath alcohol testing;

(5) participation in a laboratory setting operating the breath testing equipment. Laboratory practice will include the analysis of reference samples, as well as the analysis of breath samples from actual drinking subjects and completion of all required records and reports needed for documentation.

(c) Each course of instruction shall be coordinated by, or under the general direction or supervision of, a certified technical supervisor.

(d) All courses of instruction will be open to the scientific director or designated representative for inspection thereof.

(e) Upon satisfactory proof of compliance of subsections (a) - (d) of this section to the scientific director, the scientific director will approve the course of instruction and its participants will be eligible to apply for operator certification.

(f) Prior to commencing the course, it will be the responsibility of the teaching agency to make arrangements with the office of the scientific director for the administration of examinations.

(g) Prior to the administration of the examination by the scientific director, it shall be the responsibility of the course of instruction coordinator(s) to provide proof that all students attending the course of instruction have been authorized and approved by the technical supervisor responsible for the technical supervision of the operator upon certification. Failure to provide this authorization will delay the administration of the examination and/or certification until such time as proof of authorization can be documented.

(h) Examinations for operator certification after completion of a course will be in accordance with §19.4(a)(4) of this title (relating to Operator Certification).

(i) Failure to maintain the provisions stated in this section will be cause for the scientific director to rescind approval of a course of instruction.

§19.7. Revisions.

The changes which are adopted with the revision of these regulations apply only to breath tests that are done after the date of this revision. Previous revisions of these regulations are not nullified and nothing herein should be construed as limiting or canceling the effect of old regulations on tests done under these previous regulations.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



**37 TAC §§19.3 - 19.8**

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

*the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Public Safety (the department) proposes the repeal of §§19.3 - 19.8, concerning Breath Alcohol Testing Regulations. The repeal of these sections is filed simultaneously with proposed new §§19.3 - 19.7, for the purpose of reorganizing, updating, and clarifying the rules governing the Breath Alcohol Testing Regulations.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these repeals are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these repeals are in effect, the public benefit anticipated as a result of enforcing these repeals will be increased efficiency and clarification of the rules thereby minimizing misinterpretation.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to Randall Beaty, Crime Laboratory Service, Texas Department of Public Safety, P.O. Box 4087 (MSC 0570), Austin, Texas 78773. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §724.016, which authorizes the department to establish rules approving satisfactory analytical methods; and §724.003, which authorizes the department to adopt rules to administer Chapter 724.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 724 are affected by this proposal.

§19.3. *Approval of Reference Sample Devices.*

§19.4. *Approval of Techniques, Methods and Programs.*

§19.5. *Operator Certification.*

§19.6. *Technical Supervisor Certification.*

§19.7. *Approval of Courses of Instruction.*

§19.8. *Revisions.*

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

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General Counsel

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## CHAPTER 23. VEHICLE INSPECTION

### SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

#### 37 TAC §23.41

The Texas Department of Public Safety (the department) proposes amendments to §23.41, concerning Vehicle Inspection Items, Procedures, and Requirements. House Bill 2305, enacted by the 83rd Texas Legislature and amending in relevant part Texas Transportation Code, §548.104, requires the department adopt rules relating to the inspection of vehicles equipped with compressed natural gas containers. Specifically, the bill requires the adoption of rules regarding the type of proof required of vehicle owners relating to the certification of their vehicle's natural gas container.

In the May 2, 2014, issue of the *Texas Register* (39 TexReg 3569), the department published proposed amendments to §23.41. The department received substantive comments on the May 2nd proposal from Mr. Jeffrey Clark, representing NGV America, a compressed natural gas industry trade organization. In response to Mr. Clark's written comments, the department withdrew the proposal and redrafted the text of the rule to reflect the addition of certain provisions. In light of these changes, the department also requested input from the Texas Railroad Commission, which resulted in further changes to the initial proposal.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with this rule as proposed. There is no anticipated economic cost to individuals who are required to comply with this rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing this rule will be that the public will be informed of new requirements concerning compressed natural gas fuel systems and vehicle inspection rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.104.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.104 are affected by this proposal.

#### §23.41. *Passenger (Non-Commercial) Vehicle Inspection Items.*

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the Operations and Training Manual prior to the issuance of an inspection certificate.

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects [See attached graphic reflecting] excerpts from the Operations and Training Manual, Chapter 4.)

Figure: 37 TAC §23.41(b) (No change.)

(c) A vehicle inspection certificate may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) may be confirmed by any appropriate combination of the items detailed in this subsection:

(1) Observation of Container Label. The vehicle inspector may confirm the requirement of (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or (c)(2) are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that either or both requirements of subsection (c)(1) and (2) are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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## CHAPTER 31. STANDARDS FOR AN APPROVED MOTORCYCLE OPERATOR TRAINING COURSE

### 37 TAC §§31.1 - 31.12

The Texas Department of Public Safety (the department) proposes amendments to §§31.1 - 31.12, concerning Standards for an Approved Motorcycle Operator Training Course. These amendments are necessary to reorganize, update, and clarify rules governing the Motorcycle Operator Training Course.

Denise Hudson, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be increased opportunities for training and a more efficient licensing process through updated standards and delivery requirements of providers.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment.

Comments on this proposal may be submitted to John G. Young, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0257. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §662.009, which authorizes the department to adopt rules to administer Chapter 662.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 662 are affected by this proposal.

#### §31.1. Definitions.

The following words and terms when used in this chapter have the [following] meanings as detailed in this section, unless the context indicates otherwise.

(1) Advanced motorcycle operator training course [Motorcycle Operator Training Course]--A department approved course of instruction[; based on a curriculum developed by the Motorcycle Safety Foundation;] designed to provide experienced motorcyclists with additional skills and knowledge found to be lacking in accident-involved motorcyclists. Satisfactory completion of this course is signified by the issuance of a Texas Department of Public Safety standardized Motorcycle Operator Training Course Completion Card, MSB-8. Courses meeting this description do not meet the training requirement to obtain a motorcycle license.

(2) Basic motorcycle operator training course [Motorcycle Operator Training Course]--A department approved course of instruction[; based on a curriculum developed by the Motorcycle Safety Foundation;] designed to teach new or inexperienced motorcyclists basic riding skills and defensive street riding strategies. Satisfactory completion of this course is signified by the issuance of a Texas Department of Public Safety standardized Motorcycle Operator Training Course Completion Card, MSB-8. Courses meeting this description meet the training requirement to obtain a motorcycle license for up to 2 years from the date of issuance.

(3) Contract applicant [Applicant]--A person applying for a contract from the department to provide standard motorcycle operator training courses.

(4) Contracted motorcycle operator training site [Motorcycle Operator Training Site]--An appropriate and safe place where standard motorcycle operator training is conducted by a contracted motorcycle operator training sponsor.

(5) Department--Texas Department of Public Safety. The department is the state agency designated by the governor to establish and administer the motorcycle operator training and safety program.

(6) Intermediate motorcycle operator training course--A department approved course of instruction designed to provide motorcyclists with refresher training to include both basic and advanced

riding skills. Satisfactory completion of this course is signified by the issuance of a Texas Department of Public Safety standardized Motorcycle Operator Training Course Completion Card, MSB-8. Courses meeting this description meet the training requirement to obtain a motorcycle license for up to 2 years from the date of issuance.

(7) Instructor preparation course--A department approved course of instruction designed to provide experienced motorcyclists with training to become certified to conduct basic, intermediate, or advanced motorcycle operator courses.

(8) License applicant [Applicant]--A person applying for a license from the department to provide specialized motorcycle operator training.

(9) Licensed motorcycle operator training site [Motorcycle Operator Training Site]--An appropriate and safe place where specialized motorcycle operator training is conducted by a licensed specialized motorcycle operator training sponsor.

(10) Mobile site sponsor [Site Sponsor]--A public or private entity bound by contract to locally administer the motorcycle operator training program in locations serviced by the department's mobile training unit. The department provides the course equipment, material, and instructional staff. In its role as a mobile site sponsor, this entity is not an agent, servant, or employee of the department or the state of Texas.

(11) Motorcycle operator training and safety program [Operator Training and Safety Program]--The motorcycle operator training and safety program makes information and courses in knowledge, skills, and safety relating to the operation of motorcycles available to all motorcycle operators in this state. It also provides information to the general public on sharing the roadway with motorcycles.

(12) Motorcycle Safety Unit--An administrative unit within the department assigned with the responsibility for establishing and administering the motorcycle operator training and safety program.

(13) Motorcycle Safety Foundation (MSF)--A national, nonprofit organization whose purpose is to improve the safety of motorcyclists on the nation's streets and highways. The MSF provides programs in rider education, licensing improvement, public information, and research.

(14) Specialized motorcycle safety instructor [Motorcycle Instructor/Trainer]--An individual who has established sufficient credibility in teaching a form of specialized motorcycle operator training, and is certified and approved by the department to teach [teaches] such courses through a licensed motorcycle operator training site. This individual must meet the requirements set forth in §31.3 of this title (relating to Motorcycle Safety Instructor. This individual, unless directly employed by the department as a specialized motorcycle safety instructor, is not an agent, servant, or employee of the department or State [state] of Texas.

(15) Specialized motorcycle operator training courses [Motorcycle Operator Training Courses]--A department approved intermediate or advanced course of instruction [Courses] designed to teach knowledge and skills not addressed, or only lightly addressed, in standard motorcycle operator training courses, but considered by the department to be beneficial to public safety. These courses may include, but are not limited to, refresher training [teaching the operation of trikes (i.e. three wheeled motorcycles)], sidecar rigs, towing trailers behind motorcycles, trikes, or sidecar rigs, higher speed street skills taught on race tracks, or courses offered by a particular motorcycle manufacturer. Motorcycle courses taught by law enforcement agencies to law enforcement officers are exempt from licensing

under this definition. These courses are offered by entities contracted with or licensed by the department and if satisfactorily completed, earn students the standardized Motorcycle Operator Training Course Completion Card, MSB-8, of which the basic or intermediate course is required to obtain a motorcycle license.

(16) Sponsor--A public or private entity contracted or licensed by the department to provide motorcycle operator training. In its role as a motorcycle operator training sponsor, this entity is not an agent, servant, or employee of the department or the state of Texas.

(17) Motorcycle safety instructor [Standard Motorcycle Rider Coach]--An individual certified and approved to teach the standard motorcycle operator training courses in Texas through contracted motorcycle operator training sites. This individual must meet the requirements set forth in §31.3 of this title (relating to Standard Motorcycle Safety Instructor [Rider Coach]). This individual, unless directly employed by the department as a motorcycle safety instructor, is not an agent, servant, or employee of the department or the State [state] of Texas.

(18) Standard motorcycle operator training courses [Motorcycle Operator Training Courses]--Department approved basic, intermediate, [Basic] or advanced courses, or motorcycle safety instructor [Rider Coach] preparation courses, based on Motorcycle Safety Foundation curricula. These courses may not include information specific to any particular motorcycle brand, manufacturer, distributor, or dealership. These courses are offered by entities contracted with or licensed by [to] the department [Department of Public Safety] and if satisfactorily completed, earn students the standardized Motorcycle Operator Training Course Completion Card, MSB-8, of which the basic or intermediate course is required [for minors] to obtain a motorcycle license, or to waive the state's skill test for a motorcycle license.

§31.2. *Contracted Motorcycle Operator Training [Site] Sponsor.*

(a) A person may not offer or conduct training in motorcycle operation for [a] consideration unless the person is licensed by, or contracts with the designated state agency [department].

(b) To qualify for authorization, a sponsor must be approved by the department. The department may deny approval unless a sponsor applicant agrees to provide the training courses in accordance with the department's rules, policies, procedures, and approved curricula. A sponsor applicant must:

(1) meet the current driving record evaluation standards established by the Texas Department of Public Safety for school bus drivers pursuant to Texas Transportation Code, §521.022 by supplying a certified copy of an out-of-state driving history if requested;

(2) meet the current minimum criminal history requirement pursuant to subsection (e) of this section;

(c) Approval for a contract will be denied unless a sponsor applicant demonstrates [meets the following requirements. The applicant must demonstrate] the capacity to register students, collect and account for tuition and state reimbursements as appropriate, arrange public notice of courses, provide required insurance coverage and make all necessary insurance premium payments, provide use agreement(s), submit and maintain all required records, and contract with, schedule, and compensate department approved instructors as appropriate and within a reasonable amount of time not to exceed 45 days. [All contract applicants:]

(d) All contract applicants wishing to offer standard motorcycle operator training must submit a written request to the department.

(1) The request must state the type of training to be offered (basic, intermediate, advanced, and/or instructor preparation courses).

(2) [(4)] All contract applicants must have access to a riding area for on-cycle training that is:

(A) a paved surface, including asphalt, concrete, or other all weather surface of suitable traction; and

(B) large enough to safely accommodate any motorcycle training range approved by the department, as flat as possible, secure from vehicular and pedestrian traffic, and free of surface hazards and obstacles;

(3) [(2)] All contract applicants with permanent sites must also have access to:

(A) a secure storage area to physically and environmentally protect training motorcycles and other course equipment;

(B) a classroom, not located in a private residence, that is large enough to seat all students and instructors ~~[RiderCoaches]~~ comfortably and that contains at least one adequate desk or equivalent seating and writing surface for each student, and at least one instructor's desk, table, or podium;

(C) audiovisual presentation equipment for the classroom, including a chalkboard or equivalent; and

(D) a first aid kit and at least one five-pound Class ABC fire extinguisher, or equivalent, for the riding area.

(4) All contract applicants must abide by the Texas Sponsor Rules of Professional Conduct.

(e) ~~[(b)]~~ The department may deny, suspend, or cancel its approval for a program sponsor to conduct a course or for an instructor ~~[a RiderCoach]~~ to teach courses offered under this section if:

(1) the applicant, sponsor, or instructor ~~[RiderCoach]~~ does not satisfy the requirements of subsections (a), (b), and (c) ~~[subsection (a)]~~ of this section;

(2) [(4)] is convicted under the laws of this state, another state, or the United States, of any felony or offense involving moral turpitude, tampering with a governmental record, driving while intoxicated, or driving under the influence of drugs, or an offense committed as a result of the person's criminally negligent operation of a motor vehicle;[-]

(A) These ~~[these]~~ particular crimes relate to conducting and teaching courses because the sponsor and instructor ~~[RiderCoaches]~~ are required to be of good reputation, character, and moral conduct, to deal honestly with members of the public, keep records on behalf of the department, and to recognize the importance of, encourage, and practice safe driving and riding techniques.

(B) A ~~[a]~~ conviction for an offense other than a felony will not be considered by the department, under this subsection, if a period of more than 5 ~~[five]~~ years has elapsed since the date of the conviction or of the release of the person from the confinement or supervision imposed for that conviction, whichever is the later date.

(C) For ~~[for]~~ the purposes of this section, a person is convicted of an offense when an adjudication of guilt on an offense is entered against the person by a court of competent jurisdiction, whether or not the sentence is subsequently probated and the person is discharged from probation.[-]

(3) [(2)] cannot provide sufficient information and documentation to enable the department to evaluate or reevaluate the applicant's request for approval;

(4) [(3)] knowingly presents or allows to be presented to the department any false or misleading information relating to a request for approval;

(5) [(4)] permits or engages in any fraud or fraudulent practice concerning an application or, in any action between the applicant or licensee and the public, induces or countenances any fraud or fraudulent practice on the part of an applicant for a driver license or learner license;

(6) [(5)] knowingly or recklessly disregards or fails to comply with any departmental rule, written policy, or written procedure regarding the motorcycle operator training program; or

(7) [(6)] knowingly allows an instructor ~~[RiderCoach]~~ to give, or a student to receive, classroom or riding instruction if either exhibits any evidence of or effects from an alcoholic beverage, controlled substance, or drug as defined in Texas Penal Code, §49.01 et seq.

(f) [(e)] In determining the present fitness of a person who has been convicted of a crime and in determining whether a criminal conviction is directly related to an occupation, the department shall consider those factors stated in Texas Occupations Code, Chapter 53.

(g) [(4)] The department may construe any probation or conviction which is for a criminal offense arising from a penal provision from another state, federal, military, or foreign jurisdiction to be its closest equivalent under the penal provisions of this state.

(h) [(e)] The department may cancel its approval if:

(1) it was based on false or incorrect information or mistake, such as clerical or other nonsubstantive errors by either party; or

(2) if the discrepancy causing the suspension under these administrative rules has not been corrected within the time limit prescribed by a suspension; or

(3) any offense involving tampering with a government record or driving while intoxicated where the offense occurred within the previous 5 ~~[five]~~ years.

(i) [(4)] Each sponsor may ~~[must]~~ designate a program manager ~~[administrator]~~ to be responsible for signing ~~[contracts with the department, instructors, or students and for signing]~~ any forms required of the sponsor not including a department contract. Any person with program responsibilities must meet the same qualification requirements as a sponsor, this includes but is not limited to all owners, partners regardless if considered a silent partner and stockholders of sponsoring entity ~~[The program administrator must also be designated by the sponsor to be the custodian of all records, which shall be kept for a period of at least three years from the date of the final performance report under the contract].~~

(j) [(4)] If the sponsor is an organization, that organization may ~~[shall]~~ designate one of its members as the program manager ~~[chief school official]~~. If the sponsor is an individual, that person shall also be the program manager ~~[administrator]~~.

(k) [(h)] The control of the sponsor is considered to have changed:

(1) in the case of sole proprietorship, when more than 50% of the controlling interest has been sold or transferred;

(2) in the case of a partnership or a corporation, when more than 50% of the controlling interest has been sold or transferred; or

(3) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the sponsor.

(l) [(h)] When control of the sponsor has changed, as outlined in subsection (j) [(g)] of this section, the sponsor must notify the department. The contract will then be canceled and renegotiated through the appropriate rules and regulations.

§31.3. *[Standard] Motorcycle Safety Instructor [RiderCoach].*

(a) A person may not instruct or offer instruction in motorcycle operation to the public for a consideration without authorization from the department.

(b) To qualify for authorization, an instructor [a RiderCoach] must be approved by the department. The department may deny approval unless an instructor [a RiderCoach] applicant agrees [meets the following requirements. The applicant must agree] to teach the training courses in accordance with the department's rules, policies, procedures, and approved curricula. An instructor applicant [and] must:

(1) hold a current [national] certification for the curriculum for which they are applying: [from the Motorcycle Safety Foundation (MSF);]

(A) Standard motorcycle safety instructor; or

(B) Specialized motorcycle safety instructor.

(2) be a high school graduate or possess a valid GED;

(3) possess a current, valid unrestricted Texas motorcycle license or an equivalent license from the applicant's state of residence for at least 2 years;

(4) be a licensed driver for at least 5 [five] years;

(5) meet the current driving record evaluation standards established by the Texas Department of Public Safety for school bus drivers pursuant to Texas Transportation Code, §521.022 by supplying a certified copy of an out-of-state driving history if requested;

(6) meet the current minimum criminal history requirement pursuant to §31.2(e) of this title (relating to Contracted Motorcycle Operator Training Sponsor);

(7) must possess a current first aid and adult CPR certification. Training courses must be attended in person and provide hands-on skills practice. Courses will only be accepted from providers that meet or exceed the curriculum standards of the American Red Cross, the American Heart Association, the Department of Transportation, or the National Highway Traffic Safety Administration;

(8) [(6)] be free from addiction to alcoholic beverages or drugs; [and]

(9) [(7)] be physically competent to conduct classroom and on-cycle instruction, including technically correct riding demonstrations; and[-]

(10) must abide by the Texas Instructor Rules of Professional Conduct.

(c) [(b)] An applicant for approval to instruct an advanced motorcycle operator training course must meet all the requirements to instruct as identified in subsection (a) of this section, plus attend a department-approved curriculum update, and be able to perform technically correct riding demonstrations on his or her personal motorcycle.

(d) [(e)] The department may deny or suspend its approval if the instructor fails to meet or continue to meet the requirements of subsections (a) and (b) of this section or if the instructor, as an individual, fails to meet or continue to meet the requirements of §31.2(c) [§31.2(b)] of this title (relating to Contracted Motorcycle Operator Training [Site] Sponsor).

(e) [(d)] The department may cancel its approval if:

(1) it was based on false or incorrect information or mistake; or

(2) the discrepancy causing the suspension under §31.2 of this title (relating to Contracted Motorcycle Operator Training [Site] Sponsor), §31.3 of this title (relating to [Standard] Motorcycle Safety Instructor [RiderCoach]), §31.4 of this title (relating to Student Admission Requirements), §31.5 of this title (relating to Verification of [Standard] Motorcycle Operator Training Course Completion), §31.6 of this title (relating to Approved Standard Motorcycle Operator Training Courses), and §31.7 of this title (relating to Motorcycle Requirements) has not been corrected within the time limit prescribed by a suspension.

(f) [(e)] An instructor [A RiderCoach] approved by the department shall [may] teach both the classroom and on-cycle phases of the courses for which the approval was granted. Upon department request, the instructor shall be observed by a department appointed evaluator to ensure quality training courses are offered. The evaluator will use the same pass/fail criteria as is utilized to evaluate the student teaching portion of the approved instructor preparation course.

(g) [(f)] Instructors [RiderCoaches] approved by the department may not:

(1) give instructions or allow a student to receive instruction in motorcycle safety if either the instructor [RiderCoach] or student is using or exhibits any evidence of effect from an alcoholic beverage, controlled substance, or drug as defined in Texas Penal Code, §49.01 et seq.; or

(2) complete, issue, or validate a certificate of course completion to a person who has not successfully completed the course. A period of absence for any portion of scheduled course instruction will require that student repeat that portion of instruction prior to issuance of the certificate of completion.

§31.4. *Student Admission Requirements.*

(a) Basic motorcycle operator training courses are open to any person who is:

(1) physically and mentally capable of being licensed in Texas as a motorcycle operator; and

(2) at least 15 years old on the day the course begins.

(b) A person who is 15 years old but is less than 18 years old may not enroll into a basic motorcycle operator training course unless he or she can present the proper driver education form verifying successful completion of the classroom portion phase of driver education, has a Class C learner license [instructional permit] or an unrestricted Class C, or higher, driver license.

(c) A person who is 18 years old or older may not enroll into a basic motorcycle operator training course unless he or she has a picture identification to confirm his or her identity.

(d) Intermediate motorcycle training courses are restricted to persons who are 18 years or older on the day the course begins. For courses that require students to provide his or her own motorcycle, the motorcycle must meet the requirements of §31.7 of this title (relating to Motorcycle Requirements).

(e) [(e)] Advanced [The advanced] motorcycle operator training courses are [course is] restricted to individuals with a current motorcycle (Class M) driver license. Each student must provide his or her own motorcycle that meets the requirements of §31.7 of this title (relating to Motorcycle Requirements).

§31.5. *Verification of [Standard] Motorcycle Operator Training Course Completion.*

(a) The sponsor will issue a Standardized Motorcycle Operator Training Course Completion Card, MSB-8 to all students who have successfully completed a department approved motorcycle operator training course [the Department-Approved Basic or Advanced Motorcycle Operator Training Course] as outlined in §31.6 of this title (relating to Approved Standard Motorcycle Operator Training Courses).

(1) A [The] MSB-8 indicating completion of the department approved basic motorcycle operator training course [department-approved Basic Motorcycle Operator Training Course], is issued to verify[:]

[(A)] that a student age 15 or over[, has met the educational training requirements for a motorcycle driver's license.]

[(B)] [that a student] has successfully completed the training requirements [to qualify] for a motorcycle driver [driver's] license [skills test waiver, providing the student already has an unrestricted Class A, B, or C driver's license].

(2) A MSB-8, indicating completion of a department approved intermediate motorcycle operator training course is issued to verify that a student age 18 or over has successfully completed the training requirement for a motorcycle driver license.

(3) [(2)] A [An] MSB-8, indicating completion of the department approved advanced motorcycle operator training course [department-approved Advanced Motorcycle Operator Training Course], will be issued by the course sponsor to every student completing the approved advanced motorcycle operator training course.

(b) The department will accept only an official MSB-8 with the [original] signature of a department approved [the] instructor or designated school official [on form MSB-8]. Photocopies will not be accepted.

(c) A MSB-8 with an issuance date of over 2 years will not be accepted for the training requirement of a motorcycle license.

#### §31.6. *Approved Standard Motorcycle Operator Training Course.*

(a) Except as modified by subsection (c) of this section, the department adopts the educational, safety, and instructor [RiderCoach] standards for the[, by reference, of the most current versions of the following] Motorcycle Safety Foundation's [Foundation] (MSF) basic, intermediate, and advanced motorcycle operator training and instructor preparation courses.[:]

[(1) the approved basic motorcycle operator training course is the MSF Basic RiderCourse;]

[(2) the approved advanced motorcycle operator training course is the Experienced RiderCourse Skills Plus (ERC) element of the MSF Experienced RiderCourse Suites; and]

[(3) the approved RiderCoach preparation course is the MSF RiderCourse Preparation Course curriculum.]

(b) Approved course curricula are available for inspection at the department's Austin headquarters.

(c) In addition to these curricula requirements, the minimum standards for motorcycle operator training courses include the items detailed in this subsection [the following]:

(1) The student to instructor ratio for the basic and advanced course classroom instruction may not exceed 36 students per instructor.

(2) The student to instructor [RiderCoach] ratio for on-cycle instruction may not exceed six students per instructor until the instructor has taught more than six courses. Once this has occurred and the instructor [RiderCoach] has requested in writing and received writ-

ten permission from the department, they may teach up to eight students alone. In no case will there be more than 12 students on the range at any given time.

(3) The department may change these ratios on a case-by-case basis when such change is justified after considering the available facilities, the safety of the students and instructor(s) [RiderCoach(s)], and the efficient conduct of the course.

(4) A separate motorcycle must be available for each individual student during all on-cycle instruction.

(d) All participants and instructors [RiderCoaches] must wear protective gear when participating in the on-cycle portion of the course. The minimum protective gear includes [is as follows]:

(1) a motorcycle helmet that meets Department of Transportation standards;

(2) eye protection;

(3) over-the-ankle, sturdy footwear (not cloth, canvas, etc.);

(4) long-sleeved shirt or jacket;

(5) long, non-flare denim pants or equivalent; and

(6) full-fingered gloves, preferably leather.

#### §31.7. *Motorcycle Requirements.*

(a) A motorcycle must be rejected for use by the instructor [RiderCoach(s)] if it fails to meet the requirements of this section or if, in the discretion of the instructor [RiderCoach], the motorcycle is unsafe or inappropriate for the rider, a instructor [RiderCoach], another student, or any other person permitted in the riding area. A motorcycle may be deemed unsafe because of modification, damage, lack of maintenance, nonstandard configuration, or any other substantial safety reason.

(b) Student-owned motorcycles used in the basic, intermediate, or advanced motorcycle operator training courses [ may be a moped, motor-driven cycle or motorcycle of any engine displacement, seat height or weight and] must:

(1) meet all the requirements for operation on public highways;

(2) have proof of adequate insurance coverage available for inspection by an instructor [the lead RiderCoach]; and

(3) pass a safety inspection conducted by the instructor [RiderCoach].

(c) A student may use a borrowed motorcycle if the student can show written permission from the owner to use the motorcycle in the course and if it meets the requirements of paragraphs (1), (2), and (3) of subsection (b).

(d) A student electing to use a personal or borrowed motorcycle in the basic motorcycle operator training course must sign a waiver form stating that they accept all liability for damages caused by, or to the vehicle.

(e) A motorcycle provided by a sponsor for use in the basic motorcycle operator training course must meet a minimum of two of the three [following] criteria detailed in this subsection based on the original equipment manufacturer's specifications without modifications:

(1) an engine displacement of 500cc or less;

(2) an unladen weight of 400 pounds or less; or,

(3) a seat height of 30 inches or less.

(f) Motorcycles on loan to sponsors from the department for use in the basic motorcycle operator training course, if deemed unsafe, may be required to be returned to the department.

(g) [(f)] Sponsors may not provide a training motorcycle or riding gear to a student for use in the advanced motorcycle operator training course. If a sponsor provides a motorcycle to a student for use in the basic motorcycle operator training course, the motorcycle:

(1) must meet the safety requirements of subsection (a) and subsection (b) of this section; and

(2) may, but is not required to, be registered, inspected, or insured for operation on public highways.

(h) [(g)] Motorcycles, trikes, sidecar rigs, or any other combinations of motorcycle equipment used in specialized motorcycle training courses must be in safe operating condition, as determined by the instructor [trainer], at the time of use.

#### §31.8. Notice and Hearing Requirements.

Following a denial, suspension, or cancellation of the approval [If the department intends to deny, suspend, or cancel a contract or a license] of a program sponsor or an [approval of a standard motorcycle] instructor, notice and opportunity for hearing must be given as provided by Texas Government Code, Chapter 2001, Texas Occupations Code, Chapter 53, and 1 TAC §155.401 (relating to Notice of Hearing) [4 TAC §§155.1-155.59 (relating to Rules of Procedure)].

#### §31.9. Suspension.

The term of suspension under §31.2 of this title (relating to Contracted Motorcycle Operator Training Sponsor), [and] §31.3 of this title (relating to [Standard] Motorcycle Safety Instructor, and §31.12 of this title (relating to Licensed Motorcycle Operator Training Sponsor [RiderCoach] may not exceed 1 [one] year. The term of suspension may be reduced by the Motorcycle Safety Unit Coordinator if corrective actions have been taken and the reason for suspension no longer exists. If the reason for suspension still exists at the end of the suspension period, the suspension automatically elevates to cancellation of approval. [To regain approval, a sponsor or RiderCoach whose approval has been canceled must reapply and meet all current requirements for approval.]

#### §31.10. Technical Assistance Visits.

(a) To ensure quality training courses are offered statewide, Technical Assistance Visits (TAV) [(TAVs)] will be scheduled and conducted at each of the contracted permanent motorcycle operator training program sites. During the TAV, the focus will be on the quality of the information presented and the sponsor and/or instructors [RiderCoaches] adherence to requirements outlined in §31.2 of this title (relating to Contracted Motorcycle Operator Training Sponsor), §31.3 of this title (relating to [Standard] Motorcycle Safety Instructor [RiderCoach], §31.4 of this title (relating to Student Admission Requirements), §31.5 of this title (relating to Verification of Standard Motorcycle Operator Training Course Completion), §31.6 of this title (relating to Approved Standard Motorcycle Operator Training Courses), and §31.7 of this title (relating to Motorcycle Requirements).

(b) The TAV [TAVs] will be conducted by department personnel or by persons contracted by the department to perform them.

(c) While conducting the TAV, the evaluator will observe the instructor [RiderCoach] using the same pass/fail criteria as is utilized to evaluate the student teaching portion of the approved instructor preparation course [RiderCourse Preparation Course]. Based on observations, the evaluator will provide the instructor [RiderCoach] with suggestions to improve his/her curriculum presentations. Instructors

[RiderCoaches] not meeting the requirements of the approved criteria and unwilling to accept and adopt suggestions for improvement will be suspended as outlined in §31.3 of this title (relating to [Standard] Motorcycle Safety Instructor [RiderCoach]. Remedial actions necessary to remove the suspension will be determined by the Motorcycle Safety coordinator and may include, but are [is] not limited to:

(1) attending a department sponsored instructor [department-sponsored RiderCoach] curriculum refresher course;

(2) attending all or portions of a department sponsored instructor preparation course [department-sponsored RiderCoach Preparation Course]; or

(3) present an entire course under the supervision of a Motorcycle Safety Unit staff member, an approved instructor trainer [RiderCoach Trainer], or other individual expressly designated by the department to perform such duties.

(d) A department representative may observe specialized motorcycle operator training sites, courses, and trainers for adherence to generally accepted instructional quality and safety practices relative to the type of specialized training for which a license has been issued. Licensed sponsors of specialized motorcycle operator training must provide department representatives access to their sites and instructors for such observations.

#### §31.11. Notification of Legal Actions.

All sponsors shall notify the Motorcycle Safety Unit with the details of any legal action which has been filed against the sponsor, its officers, or its contracted instructors within 30 days of such action. Failure to notify the department within 30 days is cause for suspension of contract or license.

#### §31.12. Licensed Motorcycle Operator Training Sponsor.

(a) A person may not offer or conduct training in motorcycle operation for consideration unless the person is licensed by, or contracts with the designated state agency.

(b) To qualify for authorization, a sponsor must be approved by the department. The department may deny approval unless a sponsor applicant agrees to provide the training courses in accordance with the department's rules, policies, procedures, and approved curricula. A sponsor applicant must:

(1) meet the current driving record evaluation standards established by the Texas Department of Public Safety for school bus drivers pursuant to Texas Transportation Code, §521.022 by supplying a certified copy of an out-of-state driving history if requested;

(2) meet the current minimum criminal history requirement pursuant to subsection (h) of this section;

(c) Approval for a license will be denied unless a sponsor applicant demonstrates the capacity to register students, collect and account for tuition and state reimbursements as appropriate, arrange public notice of courses, provide required insurance coverage and make all necessary insurance premium payments, provide use agreement(s), submit and maintain all required records, and contract with, schedule, and compensate department approved instructors, as appropriate and within a reasonable amount of time not to exceed 45 days.

(d) [(a)] An entity wishing to offer specialized motorcycle operator training must submit a written request to the department.

(1) The request must state whether basic, intermediate, or advanced motorcycle operator training or instructor preparation courses are being [the type of training to be] offered;[;]

(2) the perceived benefits to public safety; and[;]



(3) describe how the applicant intends to offer such training in a safe and prudent manner.

(e) [(b)] The department may allow such training by entering into a license [issuing a letter of] agreement with the entity setting forth the responsibilities and limits of the sponsor and the department.

(f) [(e)] The [letter of agreement shall be considered a] license will authorize the entity to offer specialized motorcycle operator training [for the period set forth in the letter of agreement].

(g) The entity must abide by the Texas Sponsor Rules of Professional Conduct.

(h) [(d)] The department may deny or revoke a license to offer specialized training if the applicant:

(1) cannot provide sufficient information and documentation to enable the department to evaluate or reevaluate the applicant's request for a license;

(2) knowingly presents or allows to be presented to the department any false or misleading information relating to a request for a license;[;]

(3) knowingly or recklessly disregards or fails to comply with any departmental rule, written policy, or written procedure regarding specialized motorcycle operator training;

(4) knowingly allows an instructor to give, or a student to receive, classroom or riding instruction if either exhibits any evidence of or effects from an alcoholic beverage, controlled substance, or drug as defined in Texas Penal Code, §49.01 et seq.;

(5) is convicted under the laws of this state, another state, or the United States, of any felony or offense involving moral turpitude, tampering with a governmental record, driving while intoxicated or driving under the influence of drugs, or an offense committed as a result of the person's criminally negligent operation of a motor vehicle;[;]

(A) these particular crimes relate to conducting and teaching courses because the sponsor and instructors are required to be of good reputation, character, and moral conduct, to deal honestly with members of the public, keep records on behalf of the department, and to recognize the importance of, encourage, and practice safe driving and riding techniques;

(B) a conviction for an offense other than a felony will not be considered by the department, under this paragraph, if a period of more than 5 [five] years has elapsed since the date of the conviction or of the release of the person from the confinement or supervision imposed for that conviction, whichever is the later date; and

(C) for the purposes of this section, a person is convicted of an offense when an adjudication of guilt on an offense is entered against the person by a court of competent jurisdiction, whether or not the sentence is subsequently probated and the person is discharged from probation.

(6) The department may construe any probation or conviction which is for a criminal offense arising from a penal provision from another state, federal, military, or foreign jurisdiction to be its closest equivalent under the penal provisions of this state.

(i) The department may cancel its approval if:

(1) it was based on false or incorrect information or mistake, such as clerical or other nonsubstantive errors by either party; or

(2) if the discrepancy causing the suspension under these administrative rules has not been corrected within the time limit prescribed by a suspension; or

(3) any offense involving tampering with a government record or driving while intoxicated where the offense occurred within the previous 5 years.

(j) Each sponsor may designate a program manager to be responsible for signing any forms required of the sponsor not including a department contract. Any person with program responsibilities must meet the same qualification requirements as a sponsor, this includes but is not limited to all owners, partners regardless if considered a silent partner and stockholders of sponsoring entity.

(k) If the sponsor is an organization, that organization may designate one of its members as the program manager. If the sponsor is an individual, that person shall also be the program manager.

(l) The control of the sponsor is considered to have changed:

(1) in the case of sole proprietorship, when more than 50% of the controlling interest has been sold or transferred;

(2) in the case of a partnership or a corporation, when more than 50% of the controlling interest has been sold or transferred; or

(3) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the sponsor.

(m) When control of the sponsor has changed, as outlined in subsection (j) of this section, the sponsor must notify the department. The contract will then be canceled and renegotiated through the appropriate rules and regulations.

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

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For further information, please call: (512) 424-5848

## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes the repeal of §380.8733, concerning Surveillance and Supervision Levels in Parole Home Placement, §380.8763, concerning Main Campus - Corsicana Residential Treatment Center, and §380.8795, concerning New Treatment Programs.

TJJD also proposes new §380.8581, concerning Supervision Levels in Parole Home Placement.

TJJD also proposes amendments to §§380.8701 - 380.8703, 380.8705, 380.8707, 380.8715, 380.8751, 380.8767, 380.8769, 380.8771, 380.8775, 380.8779, 380.8781, 380.8785, 380.8789, and 380.8791, concerning Treatment.

#### SECTION-BY-SECTION SUMMARY

Proposed new §380.8581 will republish, with minor wording clarifications, the content of §380.8733.

Throughout Subchapter B, minor clarifications, grammatical corrections, and terminology updates have been made. Various sections have been reorganized to promote clarity. Specific changes made throughout the subchapter are listed in the following paragraphs.

The proposed amendment to §380.8701 will clarify that the assessment and treatment summary, rather than the individual case plan, is developed with the youth at the Orientation and Assessment Unit.

The proposed amendment to §380.8702 will include information from §380.8795 about TJJD's ability to pilot new treatment programs as the need arises.

The proposed amendment to §380.8703 will remove Stage 5 from the TJJD rehabilitation program and incorporate relevant stage indicators from Stage 5 into Stage YES. The amended rule will also clarify that youth are demoted to Stage 1 if they are recommitted for a new offense *committed while in the community*. However, if a youth is recommitted for an offense committed in a TJJD or contract facility, the youth will be placed on the most appropriate stage for his/her current behavior and progress in the program. Additionally, a youth who is returned to a high or medium restriction program for non-disciplinary reasons will also be placed on the most appropriate stage for his/her behavior and progress.

The proposed amendment to §380.8705 will delete redundant information about visitation that is already addressed in §380.9312 of this title. A statutory citation will also be corrected.

The proposed amendment to §380.8707 will remove the exception that allows a youth in the Sexual Behavior Treatment Program to be furloughed to the home where his/her victim or potential victim resides before the home has been approved as a parole placement.

The proposed amendment to §380.8715 will add a reference to the federal Administration of Children and Families as one of the entities that regulate the foster care reimbursement program.

The repeal of §380.8733 will allow for the content of this section to be moved to Subchapter A of this chapter as new §380.8581.

The proposed amendment to §380.8751 will expand the group of youth who are assessed for sexual behavior treatment need to include youth who have a documented history of sexually inappropriate behavior. Currently, the rule requires this assessment only for youth who were adjudicated for a sex offense. The amended rule will also clarify that the "moderate need" category for medical services also includes youth who have a condition that is moderate in severity and that may or may not require frequent access to off-site services. Additionally, the rule will clarify that a youth's noncompliance with medical treatment may cause his/her assessed medical need level to be raised. Several terminology changes will also be made to better reflect current usage among mental health practitioners.

The repeal of §380.8763 will eliminate redundancy among TJJD rules. Rules such as §§380.8521, 380.8545, and 380.8751 address TJJD's ability to place youth at the TJJD-operated residential treatment center, which is no longer in Corsicana.

The proposed amendment to §380.8767 will clarify that the psychiatric evaluation used to admit a youth to the crisis stabilization unit must be performed by a psychiatric provider (i.e., psychia-

trist or mid-level psychiatric practitioner). The rule will also clarify that the psychological evaluation used to admit the youth must be approved, but not necessarily performed, by a doctoral-level psychologist. The amendment will also clarify that at the end of the 45-day evaluation period, a youth must be admitted to the stabilization unit via a due process hearing or transferred to another facility.

The proposed amendment to §380.8769 will delete the definition of mental illness and instead refer to the definition provided in the Texas Health and Safety Code.

The proposed amendment to §380.8771 will remove state mental hospitals as an emergency placement option. The rule will also clarify that youth experiencing a psychiatric crisis may be temporarily placed in any hospital, not just a private psychiatric hospital, until he/she is able to be moved to the TJJD crisis stabilization unit.

The proposed amendment to §380.8775 will replace the term "mental retardation" with "intellectual disability" and will remove references indicating that the Corsicana Residential Treatment Center is the only TJJD facility where specialized services for youth with intellectual disabilities are offered.

The proposed amendment to §380.8779 will replace the term "mental retardation" with "intellectual disability." The amended rule will also add references to the definitions of "intellectual disability" and "mental illness" as found in the Texas Health and Safety Code.

The proposed amendment to §380.8781 will remove certain elements that are not required by law from the criteria TJJD uses when determining whether to pursue a mental health commitment.

The proposed amendment to §380.8785 will clarify that the youth is required to sign all appropriate sex offender registration forms. The amended rule will also delete a provision that requires TJJD *not* to register youth with deferred registration orders if certain criteria are met. Instead, the rule will state that TJJD will notify the committing court and district attorney concerning whether the youth completed treatment for the sex offense and will register the youth if required by law.

The proposed amendment to §380.8789 will include only minor, non-substantive wording changes.

The proposed amendment to §380.8791 will change the scope of the rule to apply to all youth with a high or moderate need for sexual behavior treatment. Currently the rule applies only to youth who were adjudicated for a sex offense or as a result of a plea bargain for the arrest of a sexual offense. The amended rule will also no longer require the youth to participate in presenting his/her safety and reintegration plan to the family as a prerequisite to returning home. Presentation of the safety and reintegration plan will now be one of three ways a youth may show he/she is ready to return home. The other two ways are achieving the highest stage in the TJJD rehabilitation program and completing the sexual behavior treatment program.

The repeal of §380.8795 will allow for the content of this rule to be consolidated into the amended §380.8702.

#### RULE REVIEW

Simultaneously with these proposed rulemaking actions, TJJD also publishes this notice of intent to review all rules in Chapter 380, Subchapter B, as required by Texas Government Code §2001.039. Comments on whether the reasons for originally

adopting these rules continue to exist may be submitted to TJJJ by following the instructions provided later in this notice.

#### FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the new, amended, and repealed sections will be in effect, there is no significant fiscal impact to state or local governments as a result of enforcing or administering the sections.

#### PUBLIC BENEFIT/COSTS

Teresa Stroud, Senior Director of State Programs and Facilities, has determined that for each year of the first five years the new, amended, and repealed sections are in effect, the public benefit anticipated as a result of administering the sections will be the promotion of youth rehabilitation through a more thorough assessment and reintegration process for youth with sexual behavior treatment needs and a simplified system for assessing youth progress in the general rehabilitation program. Another anticipated public benefit will be the availability of rules that more accurately reflect current statutes, TJJJ's current organizational structure and practices, and current terminology used by mental health practitioners.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

#### PUBLIC COMMENTS

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

### SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

#### DIVISION 6. PAROLE AND DISCHARGE

##### 37 TAC §380.8581

#### STATUTORY AUTHORITY

The new section is proposed under Texas Human Resources Code §242.003, which authorizes TJJJ to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJJ schools, facilities, and programs. The section is also proposed under Texas Human Resources Code §242.059, which authorizes TJJJ to establish active parole supervision to aid children given conditional release to find homes and employment and become reestablished in the community. Additionally, the section is proposed under §245.001 which authorizes TJJJ to employ parole officers to supervise and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with rules adopted by the agency.

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

*§380.8581. Supervision Levels in Parole Home Placement.*

(a) Purpose. The purpose of this rule is to provide for varying intensity levels of supervision for youth on parole status in a home placement or home substitute placement.

(b) Definitions. For definitions of certain terms used in this rule, see §380.8501 of this title.

#### (c) General Provisions.

(1) Levels of supervision intensity are based on each youth's needs and the degree of risk presented to the public. The three levels of parole supervision are minimum, moderate, and intensive.

(2) Upon release, all youth are initially placed on intensive supervision.

(3) Youth who receive a housing rent subsidy under §380.8583 of this title remain on intensive supervision for the duration of the subsidy.

(4) Levels of supervision are reassessed on a scheduled basis not to exceed 90 days and any time sooner as deemed appropriate by the parole officer. This reassessment may result in an increase, decrease, or no change in the level of parole supervision.

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 August 12, 2014.

TRD-201403789

Chelsea Buchholtz

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: September 28, 2014

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



### SUBCHAPTER B. TREATMENT DIVISION 1. PROGRAM PLANNING

#### 37 TAC §§380.8701 - 380.8703, 380.8705, 380.8707, 380.8715

The amended sections are proposed under Texas Human Resources Code §242.003, which authorizes TJJJ to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJJ schools, facilities, and programs.

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

*§380.8701. Case Planning.*

(a) Purpose. The purpose of this rule is to ensure the case management of each youth is individualized and flexible[;] and is based on the youth's risk and protective factors, abilities, and need for services. [Risk and protective factors are identified and correspond to long and short-term objectives that are developed to facilitate the youth's progress in the rehabilitation program. The resulting case plan is reviewed regularly and revised when necessary.]

(b) Applicability. This rule applies to youth committed to the Texas Juvenile Justice Department.

(c) Definitions. Definitions for terms used in this rule are in [under] §380.8501 of this title.

#### (d) General Provisions [Case Planning].

(1) An Individual Case Plan (ICP) is [will be] developed with and for each youth by the case manager in consultation with the multi-disciplinary team. The ICP is [will be] individualized for each youth and identifies [will identify] objectives with specific strategies to address development of skills to reduce individual risk factors and increase individual protective factors.

(2) The ICP is [will be] developed in accordance with the assessment of the youth's risk and protective factors, abilities, and progress in the rehabilitation program.

(3) The ICP specifies [will specify] measurable objectives, expected outcomes, and a means to evaluate progress.

(4) ICP objectives are [will be] reviewed and progress is documented at least once every 30 days.

(5) At least once every 90 days, a multi-disciplinary team updates [will update] each youth's ICP following an integrated and comprehensive assessment of the youth's progress in the rehabilitation program. This assessment includes:

(A) re-assessment of the youth's risk and protective factors;

(B) development of objectives and treatment recommendations that reflect the youth's specialized needs and individual abilities; and

(C) when appropriate, development of a plan for transitioning the youth to the community.

(6) The ICP is [will be] developed with individualized strategies to facilitate youth progress through the rehabilitation program.

(7) An assessment and treatment summary, which forms the basis of the ICP, is developed while the youth is at the orientation and assessment unit [The ICP will be initiated during the assessment process].

(8) ICP development includes [will include] a review of youth progress and objectives and is [will be] developed with the youth and the youth's parent/guardian when possible.

#### §380.8702. *Rehabilitation Program Overview.*

(a) Purpose. The purpose of this rule is to identify the agency's philosophy and approach to the rehabilitation of juvenile delinquents in order to reduce future delinquent behavior and increase youth accountability.

(b) Applicability. This rule applies to youth committed to the Texas Juvenile Justice Department (TJJD).

(c) Definitions. See §380.8501 of this title for definitions of terms used in this rule.

(d) General Provisions.

(1) Each TJJD-operated residential facility uses [will utilize] an integrated, system-wide rehabilitative program [strategy] that offers a menu of therapeutic techniques, tools, and program components to help individual youth increase their ability to be productive citizens and to avoid re-offending.

(2) To the extent possible, TJJD's rehabilitative program offers [strategy will offer] programs in an adequate manner so that youth receive appropriate rehabilitation services recommended by the committing court.

(3) All aspects of the TJJD rehabilitation program are [will be] individualized and performance-based, with clearly defined expectations as set forth in §380.8703 of this title.

(4) Each youth's individual [individual] progress is [will be] reviewed monthly. The review addresses [and be based on all] identified risk and protective factors and individual abilities.

(5) Youth in residential facilities are [placements will be] reviewed and assessed by a multi-disciplinary team. Youth on parole

in the community are [will be] reviewed and assessed by the assigned parole officer.

(6) As youth progress in the rehabilitation program, there are increased expectations for demonstrating developed skills and social responsibility, a decreased need for [direct] staff intervention [supervision], and an increase in earned privileges as set forth in §380.9502 of this title.

(7) TJJD facilities [shall] maintain a structured, 16-hour day for all youth. During each day, [the] youth [will] work on components of the rehabilitation program.

(8) TJJD facilities [shall] provide for and youth are required to [will] participate in a structured, individually appropriate educational program or equivalent, with appropriate supports.

(9) TJJD facilities [shall] provide and eligible youth may participate in work experiences.

(10) TJJD facilities [shall] provide and youth are required to [will] participate in regular large-muscle exercise and recreation [physical training] programs.

(11) TJJD facilities [shall] provide and youth are required to [will] participate in skills development groups.

(12) Staff members [will] receive appropriate training and certification related to their role in the rehabilitation program and the types [type] of services they provide.

(13) TJJD may pilot new programs or program components for youth whose needs cannot be met by existing program components.

#### §380.8703. *Rehabilitation Program Stage Requirements and Assessment.*

(a) Purpose. Texas Juvenile Justice Department (TJJD) youth earn the ability to move to less restrictive [release from high and medium restriction] placements by progressing through a stage system that measures progress in the rehabilitation program. The purpose of this rule is to provide a general outline of the areas in which a youth must demonstrate progress and to describe the process for assessing [how] progress [is assessed].

(b) Applicability. This rule applies to all residential facilities operated by TJJD. This rule does not apply to youth in contract care programs that are not required to provide the TJJD rehabilitation program.

(c) Definitions. See §380.8501 of this title for definitions of terms used in this rule.

(d) General Themes in the Rehabilitation Program. For each stage, a youth completes objectives around the following four general themes:

(1) demonstrate an understanding of risk and protective factors and show a decrease in risk factors and an increase in protective factors over the course of the rehabilitation program;

(2) demonstrate [a youth's] increased understanding of how those personal risk factors relate to success/lack of success in the community and an [assist the youth in] understanding of how the youth's [his/her] committing offense was related to risk factors;

(3) move [the youth] toward developing a concrete community reintegration plan from the time of admission; and

(4) engage the youth's family in programming.

(e) Process for Stage Assessment.

(1) The multi-disciplinary team (MDT) conducts a stage assessment when the youth completes the required objectives for the stage or within 90 days from the previous stage assessment, whichever occurs first.

(2) Members of the MDT make stage decisions collaboratively, providing input in their areas of expertise. The MDT facilitates and confirms stage progression by reviewing progress and interviewing the youth. The youth's case manager serves as the MDT facilitator<sup>2</sup> and is responsible for contacting additional professional resources as appropriate to discuss the youth's individualized needs and abilities and to provide information regarding strategies to assist the youth to progress in the program.

(3) Each stage assessment meeting includes an integrated and comprehensive assessment of the ~~[each]~~ youth's progress in the rehabilitation program.

(A) Prior to the meeting, assigned staff members are responsible for collecting specific information in their area of expertise and making it available for the meeting.

(B) The case manager is responsible for contacting the parent/guardian and parole officer to invite them to the meeting and ensuring their input into the process.

(C) The youth is responsible for being prepared to discuss information related to his/her program and preparing any information he/she is required to present for ~~[relative to]~~ stage progression.

(D) During the stage assessment:<sup>2</sup>

(i) the youth's general progress in the program and on specific case plan objectives is reviewed;<sup>2</sup>

(ii) risk and protective factors are reviewed;<sup>2</sup>

(iii) medical and mental health information is discussed (if ~~[where]~~ applicable);<sup>2</sup>

(iv) feedback is provided to the youth on areas of strength and areas needing improvement;<sup>2</sup>

(v) interventions to assist the youth's progress are discussed and developed;<sup>2</sup> and

(vi) community re-entry planning is discussed.

(4) If the MDT determines the stage objectives have been met, the MDT also evaluates whether the youth has consistently participated in the following other areas of programming:

(A) participation in development and completion of case plan objectives;

(B) participation in groups and individual counseling sessions;

(C) participation in specialized treatment programs (if applicable);

(D) participation in academic and workforce development programs; and

(E) application of learned skills in daily behavior.

(5) If the MDT determines that a youth meets the required indicators for the stage and has consistently participated in the other areas of programming, the youth is ~~[will be]~~ promoted to the next stage.

(6) If the MDT determines the youth has not met the indicators required for the stage or has not consistently participated in the other areas of programming, the youth remains on his/her current stage until the next stage assessment.

(7) Youth may not be demoted in stage, except when:

(A) stage demotion is assigned as a disciplinary consequence following a due process hearing, in accordance with §380.9503 of this title; or

(B) a youth is returned to a high or medium restriction facility, in accordance with subsection (h) of this section.

(8) After the stage assessment meeting, the youth and the youth's parent/guardian are notified of the results of the assessment. If appropriate, an updated individual case plan shall be developed following the meeting.

(f) Requirements for Stage Promotion.

(1) Stage 1--this stage is completed when the MDT determines that the youth has demonstrated basic knowledge of the stage objectives. The youth attends the foundational skills development groups and participates in individual sessions with his/her case manager to develop an assessment of risk and protective factors. To ~~[in order to]~~ complete stage 1, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) understand the definition of risk and protective factors;

(ii) explore risk factors related to TJJD commitment;

(iii) attempt to involve a family member or an adult mentor, with assistance from ~~[in coordination with]~~ the family liaison and case manager; and

(iv) establish a personal goal and identify strategies to achieve that goal;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) of this section.

(2) Stage 2--this stage is completed when the MDT determines that the youth has identified and discussed his/her personal risk and protective factors;<sup>2</sup> ~~[has]~~ identified patterns in his/her thoughts, feelings, attitudes, values and beliefs that relate to TJJD commitment and ongoing behaviors;<sup>2</sup> ~~[has]~~ created an initial community reintegration ~~[re-integration]~~ plan;<sup>2</sup> and ~~[has]~~ participated with the MDT in targeting specific skills for development based on ~~[related to]~~ his/her risk and protective factors. To ~~[in order to]~~ complete stage 2, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) explore personal risk and protective factors;

(ii) share identified risk and protective factors with his/her family or adult mentor;

(iii) identify patterns in thoughts, feeling, attitudes, beliefs and values; and

(iv) create an initial community reintegration ~~[re-integration]~~ plan;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) of this section.

(3) Stage 3--this stage is completed when the MDT determines that the youth has completed skill lessons assigned by the case manager and MDT necessary to reduce risks and enhance protective factors. The youth is expected to take responsibility for the committing offense, identify patterns in thinking, and be able to discuss the impact of the offense on direct and indirect victims. The youth is expected to incorporate the new skills learned while in the facility into daily living situations and into a community reintegration [re-integration] plan. To [in order to] complete stage 3, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) show a reduction of risk factors and an increase in protective factors;

(ii) take responsibility for the committing offense;

(iii) share progress on reducing risk factors and increasing protective factors with his/her family member or adult mentor; and

(iv) complete the community reintegration [re-integration] plan;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) of this section.

(4) Stage 4--this stage is completed when the MDT determines that the youth demonstrates and practices skills learned in skills groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors that are consistent with identified protective factors on a regular basis. Additional skills are learned as assigned and the community reintegration [re-integration] plan is revised as needed and reviewed. The community reintegration [re-integration] plan is considered complete when the case manager, youth, and the youth's parent/guardian/adult mentor approve the document. To [in order to] complete stage 4, the youth must:

(A) complete the following objectives in accordance with the specified indicators for each objective:

(i) show a reduction of risk factors and an increase in protective factors;

(ii) identify new thoughts, feelings, attitudes, beliefs, and values that might increase success in the community;

(iii) share the community reintegration [re-integration] plan with his/her family or adult mentor; and

(iv) finalize the community reintegration [re-integration] plan;

(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and

(C) consistently participate in other areas of programming as described in subsection (e)(4) of this section.

(5) Stage 5--youth who have completed stage 4 in a high or medium restriction facility and remain in a medium restriction facility are assigned to stage 5. The youth updates the community re-integration plan as he/she encounters real situations and influences in the community. The youth reviews risk and protective factors and completes thinking reports on specific situations; identifying patterns in thinking. In order to complete stage 5, the youth must:]

[(A) complete the following objectives in accordance with the specified indicators for each objective:]

[(i) review any changes to risk factors and protective factors in the halfway house environment;]

[(ii) review thoughts, feelings, attitudes, values, and beliefs related to community re-integration;]

[(iii) comply with, review, and revise the community re-integration plan;]

[(iv) share the revised community re-integration plan with his/her family or adult mentor;]

[(B) present and discuss his/her progress with the MDT as specified in the stage indicators; and]

[(C) consistently participate in other areas of programming as described in subsection (e)(4) of this section:]

(5) [(6)] Youth Empowerment Status--youth who complete stage 4 and remain in a residential [high restriction] facility [or who complete stage 5 and remain in a medium restriction facility] are assigned to Youth Empowerment Status. This status requires [ensures that] youth to continue to work in the program to maintain their gains, continue to reduce risk factors and increase protective factors, continue their skills development, update their community reintegration [re-integration] plan as circumstances change, and contribute positively to their living environment. If the MDT determines that a [the] youth has met all objectives, the youth is placed on "active" status. If the MDT determines that the youth has not met all objectives, the youth is placed on "inactive" status. The youth's objectives are:

(A) show [youth shows] a reduction of risk factors and an increase in protective factors;

(B) review and revise [youth reviews and revises] the community reintegration [re-integration] plan;

(C) comply with the community reintegration plan (only for youth in medium restriction facilities);

(D) share the revised community reintegration plan with his/her family or adult mentor (only for youth in medium restriction facilities);

(E) [(C)] participate [youth participates] in the development and completion of the case plan;

(F) [(D)] attend [youth attends] all scheduled groups;

(G) [(E)] participate [youth participates] in specialized treatment program(s) or supplemental groups, if applicable;

(H) [(F)] participate [youth participates] in academic and workforce development programs commensurate with abilities; and

(I) [(G)] [youth] consistently apply [applies] learned skills in daily behavior.

(g) Opportunity to Demonstrate Completion of Requirements.

(1) Some objectives may be completed in a single month. Completion of all stage requirements for promotion is [are] demonstrated primarily through consistent participation in scheduled activities and development of skills to address risk factors, which will generally take longer than one month to achieve. The stage requirements are generally sequential.

(2) During each monthly assessment period, the youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress. With reasonable

effort by the youth, the requirements of the highest stage will be completed within [by] the youth's initial minimum length of stay or minimum period of confinement. For youth whose minimum length of stay or minimum period of confinement exceeds 12 months, the schedule must provide an opportunity for completion of the highest stage within one year.

(h) Stage Assessment Upon Return to a High or Medium Restriction Facility.

(1) If a youth is [Youth who are] returned to a high restriction facility [from a medium restriction facility] for disciplinary reasons through [as a result of] a due process hearing other than a parole revocation hearing, the youth is [other than parole revocation hearing] are placed on stage 3[,] or [are] retained on the current stage if currently assigned to stage 1 or 2.

(2) If a youth is [Youth who are] returned to a high restriction facility as a result of a parole revocation hearing, the youth is placed on stage 1.

(3) If a youth is [or who are] recommitted to TJJD for a new offense committed while in the community, the youth is [are] placed on stage 1.

(4) If a youth is recommitted to TJJD for a new offense committed in a TJJD-operated or TJJD-contracted facility, the youth is reassessed by the MDT and placed on the most appropriate stage for his/her current behavior and progress in the rehabilitation program.

(5) If a youth is returned to a high or medium restriction facility for non-disciplinary reasons, the youth is reassessed by the MDT and placed on the most appropriate stage for his/her current behavior and progress in the rehabilitation program.

(i) Appeal of Assessment. A [The] youth may appeal the results of a stage assessment or of the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this title. The person assigned to respond to the grievance must not be a member of the MDT or a staff member who has been involved in the youth's current assessment.

§380.8705. *Family Involvement.*

(a) Purpose. The purpose of this rule is to establish the amount and type of involvement the Texas Juvenile Justice Department (TJJD) [Youth Commission (TYC)] encourages and seeks with the families of TJJD [family of] youth [in jurisdiction].

(b) Parent Notifications.

(1) Parents or guardians of youth younger than 18 shall be provided the following information without regard to the youth's consent:

(A) written notification of the youth's [youth] placement;

(B) the name of the youth's case manager [primary service worker (PSW)];

(C) instructions for contacting the youth's case manager [PSW];

(D) rights and rules about [regarding] visitation, mail, and telephone;

(E) rules about [regarding] personal property;

(F) rules about [regarding parents] sending money to the youth; and

(G) copies of the Individual Case Plan (ICP).

(2) Youth 18 and older must give written consent for information to be disclosed to a parent or guardian, with the following exceptions:

(A) Pursuant to federal law 20 USCA 1232g, educational information may be shared with a parent or guardian whose child is a dependent student ["dependent student"] as defined in section 152 of the Internal Revenue Code of 1986[,] pursuant to federal law 20 USCA 1232g; and]

(B) Pursuant to federal law 20 USCA(m)(1)(A), if a youth is in a residential placement other than a high restriction facility, any notices required under Individuals with Disabilities Education Act (IDEA), Part B, including Admission, Review, and Dismissal (ARD) committee meetings and scheduled evaluations[,] if the youth is in a residential placement other than high restriction pursuant to federal law 20 USCA 1221e-3] will be provided to the parent or guardian.

(3) Written information sent to parents or guardians who are [may be] non-English speaking is [shall be either] translated into [to] Spanish or accompanied by a letter stating that TJJD [TYC] will translate the information into the spoken language at the request of the parent or guardian.

(c) Communication.

(1) In the course of the communication described below, the youth's case manager must [PSW shall] not disclose any information for which a youth 18 or older has withheld consent.

(2) The youth's case manager [Youth's PSW shall]:

(A) seeks [seek] input from the family for the youth's ICP;

(B) encourages [encourage] families to communicate concerns to facility administrators and/or the case manager [PSW];

(C) encourages [encourage] families to visit their child in any program and prepare for the youth's return home;

(D) whenever possible, counsels [counsel a youth's] parents or guardians in preparation for the youth's return home;

(E) encourages [encourage] youth to communicate with families by letter and/or telephone; and

(F) refers [refer] families to other agencies that provide services needed by the families.

(d) Visitation.

[+] Youth are allowed to have visitation subject to the safe and secure operations of the program. See §380.9312 [§93.1] of this title for more information on visitation [(relating to Basic Youth Rights)].

[(2) Youth have a right to refuse visitation.]

[(3) Parents' Visitation.]

[(A) Parents shall have the right to private, in-person communication with their child for reasonable periods of time. The time, place, and conditions of the private, in-person communication may only be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility.]

[(B) Private, in-person communication means a communication between a parent and his/her child in a location where conversation cannot be overheard by staff.]

[(C) Parents wishing to have private, in-person communication with their child are expected to make the request at least 24 hours before the visitation. Requests not made within 24 hours should be accommodated if facility capacity allows.]

§380.8707. *Furloughs.*

(a) Purpose. The purpose of this rule is to establish the conditions under which a youth may be furloughed while in any residential placement [assigned by the agency].

(b) Definitions [Explanation of Terms Used]. Furlough--an authorized absence from an assigned residential facility [program] for a specific purpose and for a limited period of time.

(c) General Provisions.

(1) Youth in a residential facility [programs] may be granted the following types of furloughs. [Furlough Types.]

(A) [(1)] Emergency. An emergency furlough may be granted when an emergency situation exists in the youth's family that [; which] under normal circumstances[;] would require his/her presence as a family member.

(B) [(2)] Administrative. An administrative furlough may be granted for programmatic reasons including pre-placement visits to residential programs, home visits, and medical services.

(C) [(3)] Bench warrant. A bench-warrant [bench warrant] furlough is granted when a bench warrant is served on a youth and custody is transferred to the judicial jurisdiction issuing the warrant.

(D) [(4)] Return to court. A return-to-court [return to court] furlough is granted when a determinate sentenced offender leaves a residential facility [program] for a court appearance to determine disposition as required by law.

(2) [(4)] Administrative furloughs are not permitted [shall not be granted] for youth assigned to placement in emergency shelters.

(3) [(e)] Administrative furloughs [shall not be granted] to a [disapproved] home that has been disapproved or is [or one with a] pending a home evaluation are not permitted. [; with one exception. Administrative furlough may be granted under conditions and criteria in (GAP) §87.91 of this title (relating to Family Reintegration of Sex Offenders).]

(4) [(f)] Emergency and administrative furloughs are subject to certain restrictions that depend on a youth's custody and supervision rating. See §380.9707 of this title for more information [shall not be granted unless such granting is consistent with custody and supervision requirements and restrictions contained in (GAP) §97.7 of this title (relating to Custody and Supervision Rating)].

§380.8715. *Title IV-E Foster Care Youth.*

(a) The Texas Juvenile Justice Department (TJJD) [Youth Commission (TYC) staff shall ensure that the agency] participates in the [Federal] Title IV-E federal foster care reimbursement program [funding program] in compliance with all federal and state regulations set by the Administration for Children and Families (ACF) and the Texas Department of Family and Protective Services (DFPS). DFPS administers the program for Texas and is directly responsible to ACF. [; the agency administering the program.]

(b) All TJJD [TYC] youth placed in halfway houses or non-secure contract care facilities are [will be] screened for [eligibility for the] Title IV-E eligibility [program].

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 August 12, 2014.

TRD-201403790

Chelsea Buchholtz

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: September 28, 2014

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



**37 TAC §380.8733**

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

The repeal is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8733. *Surveillance and Supervision Levels in Parole Home Placement.*

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

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**DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS**

**37 TAC §§380.8751, 380.8767, 380.8769, 380.8771, 380.8775, 380.8779, 380.8781, 380.8785, 380.8789, 380.8791**

The amended sections are proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

Section 380.8751 is also proposed under Texas Human Resources Code §244.001, which requires TJJD to develop a written treatment plan for each child which outlines the child's specialized treatment needs, makes recommendations for meeting those needs, and makes an individually tailored statement of treatment goals, objectives, and timelines.

Section 380.8779 is also proposed under Texas Human Resources Code §244.011, which requires TJJD to discharge certain children who are mentally ill or mentally retarded once the minimum length of stay has been completed.

Section 380.8781 is also proposed under Texas Human Resources Code §244.0125, which authorizes TJJD to petition the committing court for the initiation of mental health commitment proceedings if a child is committed to TJJD under a determinate sentence.

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



§380.8751. *Specialized Treatment [Special Needs Offenders].*

(a) Purpose. The purpose of this rule is to establish the process by which youth committed to the Texas Juvenile Justice Department (TJJD) [Youth Commission (TYC)] are assessed and treated for specialized treatment needs. The purpose of all provisions in this rule is to promote successful youth reentry [re-entry] and reduce risk to the community by addressing individual specialized treatment needs through programs that are shown to reduce risk to reoffend [re-offend].

(b) Definitions. Except as indicated in this subsection, see §380.8501 of this title for definitions of [fœr] terms used in this rule [are found in §85.1 of this title].

(1) Intensive Treatment Program--a high-intensity [high intensity], residential program in which all youth receiving treatment reside in a common dormitory. Intensive treatment programs are designed to address youth with a high need for specialized treatment [in an identified area]. Treatment is delivered by licensed or appropriately trained staff in a milieu that is designed to address the specialized need [needs] on a continuous basis.

(2) Psychoeducational Program--a low-intensity [low intensity] education program delivered by appropriately trained staff that is designed to address youth with a low need for specialized treatment [in an identified area].

(3) Sex Offense--a reportable adjudication as defined in Article 62.001 of the Texas Code of Criminal Procedure.

(4) Mental Health Professional--see definition in §380.9187 of this title.

(5) [~~(3)~~] Short-Term Treatment Program--a moderate-intensity [moderate intensity] treatment program involving specialized groups and individual counseling delivered by licensed or appropriately trained staff. Short-term [Short term] treatment programs are designed to address youth with a moderate need for specialized treatment [in an identified area].

[~~(4)~~] Sex Offense--a reportable adjudication as defined in Article 62.001 of the Code of Criminal Procedure.]

(c) General Provisions.

(1) Youth with one or more specialized needs will have these needs addressed while under TJJD [TYC] jurisdiction. Some specialized programs may be provided concurrently and others successively. Youth may have specialized needs addressed while in a high or medium restriction facility or on parole based on assessment outcomes, treatment team recommendations, and any necessary administrator [Central Office] approvals.

(2) If a youth cannot be provided the type(s) of specialized program designated in this rule for his/her assessed need level, the youth will be provided with the most appropriate alternate form of specialized intervention for that treatment need.

(d) Treatment Planning.

(1) Upon admission to TJJD [TYC], comprehensive assessments are conducted at the orientation and assessment unit to determine if a youth has any specialized treatment needs and to identify the type of specialized program that is best suited to address those needs. For each youth assessed as having a specialized treatment need, an initial plan documenting all specialized treatment needs and recommended programs is [will be] developed before the youth leaves the orientation and assessment unit.

(2) A [Upon arrival at his/her initial placement, a] comprehensive plan is [will be] developed for each youth with specialized

treatment needs upon the youth's arrival at his/her initial placement. The plan must [will]:

(A) include individually tailored statements regarding treatment goals and objectives;

(B) include the tentative sequence and start dates for each specialized program;

(C) be developed with input from the youth; and

(D) be documented in the youth's individual case plan.

(3) The sequence and start dates for specialized programs are [will be] based on individual youth needs, facility schedules, and program openings, with consideration given to the youth's minimum length of stay or minimum period of confinement.

(4) The comprehensive specialized treatment plan is [will be] reviewed, re-evaluated, and modified in accordance with rules for the review and modification of the individual case plan, as set forth in §380.8701 [§87.1] of this title. The plan is [will] also [be] modified following each reassessment [re-assessment] of a youth's specialized treatment needs.

(5) Specialized treatment needs may be re-assessed at any time during a youth's stay in TJJD [TYC].

(e) Specialized Treatment Needs. The areas of specialized treatment need are set forth in paragraphs (1) - (6) of this subsection, with each area given priority for placement and treatment based on urgency of need.

(1) Medical. Each youth is provided comprehensive medical and dental examinations. Based on the results of these examinations, each youth is assigned a need level for medical or dental services. Non-compliance with treatment may cause any youth to be designated as higher need than the underlying condition would typically warrant.

(A) High Need--includes youth who require medical, surgical, or dental services of an intense/acute nature. The youth has a serious acute condition, experiences an exacerbation of a chronic medical or dental condition, sustains a serious injury, and/or may require hospitalization. The youth's condition is unstable or unpredictable, and recovery requires 24-hour nursing care or supervision beyond the scope of normal infirmary services. The youth's medical needs, until resolved, take precedence over other therapeutic interventions and temporarily prevent active participation in programming.

(B) Moderate Need--includes youth who are [have a] diagnosed with a [serious] medical or dental condition that is moderate to serious in severity and that may require [requires] frequent access to off-site clinical and/or hospital services [and potential access to hospital services] for symptom exacerbation.

(C) Low Need--includes youth who are diagnosed with a condition that is mild to moderate in severity and does not require ongoing off-site treatment or monitoring. The youth may be temporarily restricted from an activity due to an accident, injury, or illness of mild to moderate severity.

(D) None--includes youth with no medical or dental diagnosis requiring ongoing attention.

(2) Mental Health. The mental health assessment is provided by psychology and psychiatry staff through comprehensive psychological and psychiatric evaluations using the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). Based on this assessment, each youth is assigned a need level for mental health treatment services.

(A) High Need--Level 1.

(i) This level of treatment need includes youth who:

(I) are diagnosed with [have] a mental disorder [~~diagnosed on Axis I~~]. As a result of the disorder, there is disorganized, bizarre, and/or grossly inappropriate behavior in one or more of the following areas: social or interpersonal interactions, educational or vocational participation, or the ability to manage daily living requirements;

(II) have an assessment of adaptive functioning [~~as indicated on Axis V~~] that is consistent with the level of impairment noted;

(III) cannot meaningfully participate in programming until the underlying disorder is stabilized; and/or

(IV) are an imminent danger to themselves or others as a result of the mental disorder.

(ii) This level of impairment is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar behavioral disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of impairment require a protective environment during this phase of the disorder and are [will be] treated at an agency-operated crisis stabilization unit or a psychiatric [state] hospital with psychiatric care as the highest priority.

(B) High Need--Level 2.

(i) This level of treatment need includes youth who:

(I) are diagnosed with [have] a mental disorder [~~diagnosed on Axis I~~]. As a result of the disorder, there is moderate to severe impairment in one or more of the following areas: social or interpersonal interaction, educational or vocational participation, or the ability to manage daily living requirements despite receiving psychiatric care and clinical support services;

(II) have an assessment of adaptive functioning [~~as indicated on Axis V~~] that is consistent with the level of impairment noted; and/or

(III) are having a difficult time maintaining stability and program participation despite receiving psychiatric services and local clinical support.

(ii) This level of impairment is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar behavioral disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of treatment need are [will be] placed in an intensive mental health treatment program with structured interventions and enhanced clinical support services in addition to regular psychiatric services.

(C) Moderate Need.

(i) This level of treatment need includes youth who:

(I) are diagnosed with [have] a mental disorder [~~diagnosed on Axis I~~]. As a result of the disorder, behavior is mildly impaired by signs and symptoms of the mental disorder in one or more of the following areas: social or interpersonal interaction, educational or vocational participation, or ability to manage daily living requirements with regular psychiatric care and/or psychological intervention;

(II) have an assessment of adaptive functioning [~~as indicated on Axis V~~] that is consistent with the level of impairment noted; and/or

(III) display symptoms or difficulties with adaptive behavior as a result of abuse or trauma.

(ii) This level of treatment need is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar behavioral disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of treatment need are [will be] placed in an agency facility offering the necessary psychiatric and clinical support. Youth identified with a history of abuse or trauma are [will be] offered interventions specific to the trauma to help maintain their ability to function and participate in programming.

(D) Low Need--includes youth who have a psychiatric diagnosis and require only periodic mental health or regular psychiatric services. The assessment of adaptive functioning is consistent with the level of impairment noted.

(E) None--includes youth who have:

(i) no mental health diagnosis [~~Axis I or II mental disorder~~];

(ii) a mental health diagnosis that is made by history but its influence on the youth's functioning is so mild that it is not a focus of any specialized mental health treatment; or

(iii) a [an Axis I] diagnosis that is in remission without any current treatment intervention.

(3) Intellectual Disability [Mental Retardation]. The diagnosis of Intellectual Disability [mental retardation] is made by psychology and psychiatry staff [a psychologist] based on the results of a culturally validated [an] assessment of cognitive functioning, mental abilities, reasoning, problem solving, abstract thinking, and adaptive behavior as defined in the latest edition of the DSM [~~Diagnostic and Statistical Manual of Mental Disorders~~]. Based on this diagnosis, each youth is assigned a need level for intellectual disability [mental retardation] services. Youth are assigned to the placement that is best suited to meet the youth's individual treatment needs.

(A) High Need--includes youth diagnosed with [~~Axis II codes of~~] Moderate or Severe Intellectual Disability and corresponding deficits in intellectual and adaptive functioning [Mental Retardation].

(B) Moderate--includes youth diagnosed with mild Intellectual Disability [Mild Mental Retardation] and a co-occurring mental health treatment need of moderate or low.

(C) Low Need--includes youth diagnosed with [~~Axis II codes~~] for mild Intellectual Disability [mental retardation] and no co-occurring mental health treatment needs.

(D) None--includes youth who have no diagnosis of Intellectual Disability [Mental Retardation on Axis II].

(4) Sexual Behavior. The sexual behavior treatment assessment is provided by a psychologist, mental health professional [~~associate psychologist~~], or licensed sex offender treatment provider through a clinical interview and an agency-approved juvenile sexual offender assessment instrument. The assessment is provided for youth who have been adjudicated for a sex offense or who have a documented history of sexually inappropriate behavior. Based on this assessment, each youth is assigned a need level for sexual behavior treatment services.

(A) High Need--includes youth who receive an assessment rating of high need for sexual behavior treatment, based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are [High need youth will be] assigned to participate in an intensive sexual behavior treatment program.

(B) Moderate Need--includes youth who receive an assessment rating of moderate need for sexual behavior treatment based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are [~~Medium need youth will be~~] assigned to participate in a short-term sexual behavior treatment program.

(C) Low Need--includes youth who receive an assessment rating of low need for sexual behavior treatment based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are [~~Low need youth will be~~] assigned to participate in a psychosexual education curriculum.

(D) None--includes youth who have no assessed need for sexual behavior treatment.

(5) Capital and Serious Violent Offender. A psychologist or mental health professional [~~associate psychologist~~] makes a determination of need for capital and serious violent offender treatment for any youth who was found by a court or an administrative parole revocation hearing [~~TYC administrative law judge~~] to have engaged in conduct that resulted in the death of a person, resulted in serious bodily injury to a person, or involved using or exhibiting a deadly weapon, and any youth referred by a psychologist based on a reasonable belief the youth is in need of capital and serious violent offender treatment. The determination is based on the youth's offense history and psychological assessment of the youth's need for specialized treatment intervention.

(A) High Need--youth are [~~will be~~] assigned to participate in an intensive capital and serious violent offender program.

(B) Medium Need--youth are [~~will be~~] assigned to participate in a short-term program to address aggression and violent behavior issues.

(C) Low Need--youth are [~~will be~~] assigned to participate in a psychoeducational anger management supplemental curriculum.

(D) None--includes youth who are assessed as not having a significant risk related to violent offending or behavior.

(6) Alcohol or Other Drug Treatment. Youth identified through a screening process as needing further alcohol or other drug (AOD) assessment are [~~will be~~] assessed and diagnosed by a psychologist or mental health professional [~~associate psychologist~~] using the latest edition of the DSM [~~Diagnostic and Statistical Manual of Mental Disorders~~]. Based on a clinical interview and the results of an agency-approved, comprehensive assessment instrument, each youth is assigned a need level for AOD programming.

(A) High Need--includes youth with a diagnosis of Substance Use Disorder [~~Abuse/Dependence~~] and a high-intensity [~~high intensity~~] AOD treatment need based on the results of an agency-approved assessment instrument. Youth with this level of treatment need are [~~High need youth will be~~] assigned to participate in an intensive AOD treatment program.

(B) Moderate Need--includes youth with a diagnosis of Substance Use Disorder [~~Abuse/Dependence~~] and a moderate-intensity [~~moderate intensity~~] AOD treatment need based on the results of an agency-approved assessment instrument. Youth with this level of treatment need are [~~Moderate need youth will be~~] assigned to participate in a short-term AOD treatment program.

(C) Low Need--includes youth with any identified substance abuse history or risk that does not rise to the diagnostic level of Substance Use Disorder. Youth with this level of treatment need are

[~~Abuse or Dependence. Low need youth will be~~] assigned to participate in a psychoeducational AOD program.

(D) None--includes youth who have no history of substance abuse or risk of use.

(f) Requirement to Complete Specialized Treatment.

(1) This subsection applies only to youth committed to TJJD [~~TYC~~] on or after September 1, 2009, who are assessed as having a high or moderate treatment need in the following treatment areas: Sexual Behavior; Capital and Serious Violent Offender; or Alcohol or Other Drug Treatment. This subsection does not apply to youth assigned to complete psychoeducational supplemental curricula in these treatment areas.

(2) This subsection does not apply to decisions made by the Release Review Panel under §380.8557 [~~§85.57~~] of this title.

(3) To [~~In order to~~] qualify for transition to a medium restriction placement under §380.8545 [~~§85.45~~] of this title, a youth who has been assessed as having a high or moderate need must:

(A) complete the assigned specialized treatment program(s) while in a high restriction facility; or

(B) be scheduled to begin the assigned specialized treatment program(s) in a medium restriction facility, as documented in the youth's most recent specialized treatment plan. A requirement to complete treatment must [~~will~~] be included in the youth's conditions of placement; or

(C) as approved by the final decision authority for transition in consultation with the division director over treatment programming or designee, make sufficient progress in the assigned specialized treatment program with a corresponding reduction in risk [~~in order~~] to allow for the youth to continue the specialized treatment in a medium restriction facility. A requirement to complete treatment must [~~will~~] be included in the youth's conditions of placement.

(4) To [~~In order to~~] earn release to parole under §§380.8555, 380.8559, or 380.8569 [~~§§85.55, 85.59, or 85.69~~] of this title, a youth who has been assessed as having a high or moderate need must:

(A) complete the assigned specialized treatment program(s) while placed in the youth's current facility restriction level; or

(B) as approved by the division director over treatment programming or designee:

(i) be scheduled to begin the assigned specialized treatment program(s) while on parole status, as documented in the youth's most recent specialized treatment plan. A requirement to complete treatment must [~~will~~] be included in the youth's conditions of placement or conditions of parole, as appropriate; or

(ii) make sufficient progress in the assigned specialized treatment program with a corresponding reduction in risk [~~in order~~] to allow for the youth to continue the specialized treatment while on parole status. A requirement to complete treatment must [~~will~~] be included in the youth's conditions of placement or conditions of parole, as appropriate.

(g) Individual Exceptions.

(1) The requirement to complete specialized treatment as described in subsection (f) of this section may be waived if the division director over treatment programming or designee determines that the youth is unable to participate in the assigned specialized treatment program or curriculum due to a medical or [~~;~~] mental health condition [~~;~~] or due to an intellectual disability [~~mental retardation condition~~].

(2) Each youth's individual circumstances are [will be] considered when determining the most appropriate type of specialized treatment intervention to assign. A youth may be assigned to a specialized program designated for a higher or lower need level than the youth's assessed need level for any reason deemed appropriate by the division director over treatment programming or designee.

(3) The executive director or his/her designee may make exceptions to provisions of this rule on a case-by-case basis, based on a consideration of the youth's best interests and public safety.

(4) The justification for any individual exceptions granted under this subsection must be documented.

(h) Specialized Aftercare. Youth who successfully complete one of the following specialized treatment programs, or who otherwise need specialized aftercare as determined by the youth's treatment team, will receive specialized aftercare on an outpatient basis as needed, as recommended by the treatment team, and as available:

- (1) mental health treatment program;
- (2) intensive or short-term sexual behavior treatment program;
- (3) intensive or short-term alcohol or other drug treatment program; or
- (4) intensive or short-term capital and serious violent offender treatment program.

§380.8767. *Crisis [Corsicana] Stabilization Unit.*

(a) Purpose. The purpose of this rule is to establish criteria and a process [procedures] for admitting youth who are experiencing a psychiatric crisis into a crisis stabilization unit (CSU) operated by the Texas Juvenile Justice Department (TJJD) [admission and evaluation for specialized treatment services in the Corsicana Stabilization Unit (CSU), for psychiatrically disturbed Texas Youth Commission (TYC) youth].

(b) Definitions.

(1) Designated Mental Health Professional--has the meaning assigned by §380.9187 of this title.

(2) Psychiatric Provider--has the meaning assigned by §380.9187 of this title.

(c) [(b)] References [Applicability].

(1) For due process procedures for [The] mental health status reviews, see §380.9571 [review due process procedures are found in §95.71] of this title.

(2) For emergency mental health placements, see §380.8771 [§87.71] of this title.

[(3)] [Certain basic rights are recognized for each youth in TYC, see §93.1 of this title.]

(d) [(e)] Admissions.

(1) Admission Criteria. A youth [Youth who] may be admitted to a [the] CSU only when [at the Corsicana Residential Treatment Center are those who meet] the following criteria are met:

(A) the youth demonstrates serious dysfunction in behavior, judgment, thinking, or mood; and

(B) the dysfunction is the result of a current neurological deficit, [and/or] emotional disturbance, and/or psychiatric disorder (e.g., psychosis, major affective disorder, organic disorder, or anxiety disorder)[,e.g., psychosis, major affective disorder, organic disorder,

or anxiety disorder;] and the dysfunction is not the result of a primary conduct disorder or antisocial personality disorder; and

(C) the youth: [youth's behavior]

(i) presents a risk of serious harm to self [the youth] or others; or

(ii) [(D)] [the youth,] if not treated, will continue to suffer severe and abnormal mental, emotional, or physical distress and will continue to experience deterioration in his/her ability to function independently, as evidenced by the youth's inability to attend to basic needs, such as food, health, personal hygiene, or safety; and

(D) [(E)] a CSU [the stabilization unit] is the least restrictive [least restrictive] intervention [alternative] that is appropriate and available to safely and effectively meet the treatment needs and to control the dysfunctional behavior.

(2) Referral Documents. [Admission Process.]

[(A)] The referral must include a [Referrals. Complete] current psychiatric evaluation from a psychiatric provider and a psychological evaluation approved [evaluations] by the designated mental health professional, unless the referral is due to an emergency mental health placement under §380.8771 of this title. [a licensed psychiatrist and a psychologist must be included in order to be considered. Referral information should be sent directly to the stabilization unit.]

[(B)] Emergency Referrals. If an emergency exists, procedures in §87.71 of this title must be followed. Consistent with emergency criteria, staff may request of the superintendent immediate placement of the youth in the CSU. On admission, requirements in this policy are effective for all emergency admissions.]

(3) 96-Hour [96 Hour] Admission Review Process. A mental health status review hearing must [shall] be held for each [all] youth within 96 hours after [of] arrival at the unit. If the 96-hour [96 hour] period ends on a Saturday, Sunday, or official holiday, the hearing must be held on the next workday [regular working day]. The hearing is held to determine whether criteria for unit admission have been met.

(A) If the youth does not meet criteria [is deemed not to be appropriate] for admission, he/she is not retained in the CSU [program]. Youth who are not admitted are returned to the referring program/location.

(B) If the youth meets criteria [is deemed appropriate] for admission, he/she is retained and treated in the CSU [program].

(C) If the youth's treatment needs and appropriateness for admission cannot be determined during the [96 hour mental status review] hearing, the youth may be temporarily admitted to the CSU for diagnostic and assessment purposes for up to 45 days from the date of arrival.

(i) A youth may be temporarily admitted for diagnostic and assessment purposes only if [provided] the hearing manager determines [concludes]:

(I) [(i)] the youth exhibits [does exhibit] evidence of psychiatric dysfunction; [and]

(II) [(ii)] the youth has recently engaged in [exhibited recent] behavior that presents a danger to self or others or has demonstrated a chronic failure to progress in his/her prior programming; [placement; and]

(III) [(iii)] the youth is in need of comprehensive psychiatric and psychological evaluation in a specialized setting; and

(IV) [(iv)] the CSU is the least restrictive setting in which to effectively accomplish this evaluation.

(ii) Before the end of the 45-day diagnostic and assessment period, the CSU staff must:

(I) hold a mental health status review hearing to seek admission to CSU; or

(II) transfer the youth out of CSU if a hearing is not held or if the youth is not admitted to CSU.

(c) [(d)] Program Requirements.

(1) The program focus is [will be] on stabilization of the psychiatric dysfunction.

(2) Services are provided in a self-contained unit [at the TYC Corsicana Residential Treatment Center].

(3) An individualized treatment program, including [reflecting] treatment goals and objectives, is [shall be] developed for and with each youth.

(4) The treatment team reviews [shall review] the youth's progress weekly.

(5) The [By the end of 90 days from the date of the admission due process hearing, a] youth must [shall] be transferred out of the CSU within 90 days after the admission hearing [returned to the referring source or referred to the centralized placement unit (CPU) for appropriate placement] unless an extension is granted [becomes effective at that time].

(f) [(e)] Extensions [Extension of Time Beyond 90 Days to Treat the Psychiatric Dysfunction].

(1) Extension Criteria. An extension may be granted beyond 90 days only if [Extension may occur if criteria are met]

(A) the youth continues to meet admission criteria[;] and

[(B)] the youth's treatment plan has been implemented appropriately; or

[(B)] [(C)] the youth has symptoms of mental illness and [will benefit from treatment in the CSU and] continued treatment in the CSU [this setting] is deemed to be in the youth's best interest.

(2) [Extension] Due Process Requirements for Extensions.

(A) The due process required to determine whether extension criteria have been met is a mental health status review hearing. A youth on parole status, as defined in §380.9550 [§95.50] of this title, will remain on parole status.

(B) If an extension is recommended, the mental health status review hearing must be held [The due process hearing shall be conducted]:

(i) approximately 75 days but no later than 90 days after the last mental health status review hearing [two weeks immediately preceding the 90th day from the admission hearing or two weeks preceding the 90th day from the previous extension hearing unless the youth is being considered for transition out of the unit before the end of the initial 90 day stay or latest extension hearing]; or

(ii) within two workdays after [as soon as] the youth returns to the unit if he/she is in a state hospital at the time the hearing is required.

(C) Multiple extensions may be granted by following procedures in this subsection.

[(3) The Effect of an Extension.]

[(A) Extension shall be in effect only if extension criteria are found in a due process hearing.]

[(B) An extension granted means that the period of time during which a youth may be treated for a psychiatric dysfunction under rules of this policy shall be extended for up to 90 days from the date of the extension due process hearing. Successive extension hearings may be held.]

(3) [(4)] Release and Transition Options.

[(A) The treatment team shall determine by majority vote that the youth is ready to leave the stabilization unit. The criteria for deciding releases must be consistent with the criteria for deciding admission or extension.]

[(B) Release options are consistent with the youth's residential placement at referral. Youth on institutional status will be transitioned through a Residential Treatment Program unless recommended otherwise by the treatment team.]

[(A) [(C)] The extension of time to treat the psychiatric dysfunction must [shall] be terminated when placement in a CSU is no longer needed for the primary purpose of treatment of the dysfunction, as determined by a majority vote of the youth's treatment team.

[(B) [(D)] Following termination of the extension, future placement decisions, including the youth's return to his/her home parole placement, are made in accordance with other applicable policies and procedures.

[(C) [(E)] No youth may be discharged from TJJD [TYC] jurisdiction directly from a [the] CSU unless TJJD's [TYC's] jurisdiction ends by statute.

§380.8769. Court-Ordered Mental Health Services.

(a) Purpose. The purpose of this rule is to establish criteria and a procedure for [whereby] the Texas Juvenile Justice Department (TJJD) to [Youth Commission (TYC) may] seek court-ordered mental health services for youth with mental illness.

(b) Applicability. [General Provisions].

[(+) This rule applies to all youth under TJJD's [TYC's] jurisdiction. TJJD [TYC] retains jurisdiction of youth transferred to mental health facilities for emergency detention or on temporary or extended mental health commitments unless the youth are discharged pursuant to §§380.8565, 380.8569, 380.8595, or 380.8779 [§§85.65, 85.69, 85.95, or 87.79] of this title.

[(2) For purposes of this rule, a youth is considered to have a mental illness if the youth suffers from an illness, disease, or condition that:]

[(A) substantially impairs the youth's thought, perception of reality, emotional process, or judgment; or]

[(B) grossly impairs behavior as demonstrated by recent disturbed behavior.]

(c) Definitions. Mental Illness--has the meaning assigned by Texas Health and Safety Code §571.003.

(d) [(e)] Emergency Mental Health Detention.

(1) A youth may be referred for emergency mental health detention if:

(A) the youth evidences mental illness;

(B) the youth evidences a substantial risk of serious harm to self or others;

(C) the risk of harm is imminent unless the youth is immediately restrained; and

(D) the necessary restraint cannot be accomplished without emergency mental health detention.

(2) Upon approval by the TJJJ [TYC] chief local administrator, appropriate TJJJ [TYC] staff members [shall] file the required application documents with the judge of the local county court with probate jurisdiction.

(3) If the court orders that the youth be placed in emergency mental health detention, he/she is [will be] transported to the appropriate mental health facility.

(4) TJJJ [TYC] staff members [shall] notify the youth's parents, guardian, managing conservator, or any other appropriate party of the emergency detention.

(5) Prior to the youth's discharge from the mental health facility, TJJJ [TYC] staff members [will] determine the most appropriate follow-up placement to ensure the youth's mental health needs are appropriately addressed.

(e) [(d)] Court-Ordered Mental Health Services.

(1) A youth may be referred for temporary inpatient mental health services if:

(A) the youth is mentally ill; and

(B) as a result of the mental illness the youth:

(i) is likely to cause serious harm to self or others;

or

(ii) is:

(I) suffering severe and abnormal mental, emotional, or physical distress;

(II) experiencing substantial mental or physical deterioration of the ability to function independently, exhibited by an inability to provide for basic needs; and

(III) unable to make a rational and informed decision as to whether or not to submit to treatment.

(2) A youth may be referred for extended inpatient mental health services if the criteria in paragraph (1) of this subsection are met and:

(A) the youth's condition is expected to continue for more than 90 days; and

(B) the youth has received court-ordered inpatient mental health services for at least 60 consecutive days during the preceding 12 months.

(3) A youth who is returning to or residing in the community may be referred for temporary outpatient mental health services if:

(A) the youth is mentally ill;

(B) the mental illness is severe and persistent;

(C) as a result of the mental illness, the youth will, if not treated, continue to:

(i) suffer severe and abnormal mental, emotional, or physical distress; and

(ii) experience deterioration of the ability to function independently such that the youth cannot live safely in the community without court-ordered outpatient mental health services; and

(D) the youth has the inability to participate in outpatient treatment services effectively and voluntarily.

(4) A youth may be referred for extended outpatient mental health services if the criteria in paragraph (3) of this subsection are met and:

(A) the youth's condition is expected to continue for more than 90 days; and

(B) the youth has received court-ordered inpatient mental health services for at least 60 consecutive days during the preceding 12 months.

(5) Upon approval of the application for court-ordered mental health services by the TJJJ [TYC] chief local administrator, appropriate TJJJ [TYC] staff members [shall]:

(A) notify the local Mental Health Authority (MHA) of the pending application for court-ordered mental health services;

(B) obtain a Certificate of Medical Examination from two physicians who have examined the youth within five days of the filing of the certificates with the county court. At least one physician must be a psychiatrist;

(C) complete a social summary; and

(D) file the application for court-ordered mental health services and all necessary documents with the appropriate county clerk.

(6) TJJJ [TYC] staff members [shall]:

(A) notify the youth's parents, guardian, managing conservator, or any other appropriate party of the hearing date set by the court at the time of the filing;

(B) transport the youth to the hearing; and

(C) if the youth is to be committed and TJJJ [TYC] is authorized by the court order to provide transportation:

(i) transport the youth to the mental health facility specified in the court order;

(ii) upon delivery of the youth at the receiving mental health facility, obtain a written statement from the facility acknowledging acceptance of the youth and any personal property belonging to the youth; and

(iii) file a copy of the statement with the clerk of the court that issued the writ of commitment.

(7) Prior to the youth's discharge from the mental health facility, TJJJ [TYC] staff members [will] determine the most appropriate follow-up placement to ensure the youth's mental health needs are appropriately addressed.

§380.8771. *Emergency Mental Health Admission.*

(a) Purpose. The purpose of this rule is to ensure that youth experiencing a psychiatric crisis receive [provide for obtaining] immediate emergency care [for psychiatrically disturbed youth].

[(b) Applicability. For placement in non-emergency situations see (GAP) §87.67 of this title (relating to Corsicana Stabilization Unit).]

(b) [(e)] Placement Criteria. [TYC staff may, in an emergency, place a youth who meets criteria directly in the Corsicana Stabilization Unit at Corsicana or in a psychiatric hospital.]

[(d)] A [Emergency Placement Criteria. Because of dangerous behavior due to apparent psychiatric disturbance, a] youth may be placed in a hospital or stabilization [psychiatric hospital/stabilization]

unit [when necessary] to prevent [the youth's] imminent, serious harm to self or others due to behavior stemming from an apparent psychiatric crisis.

(c) ~~(e)~~ Placement Options.

(1) The Texas Juvenile Justice Department (TJJD) refers youth who meet criteria to the following emergency placements [in an emergency, placement should be sought]:

(A) TJJD crisis stabilization unit (see §380.8767 of this title) [in the Corsicana Stabilization Unit (CSU)]; or

~~(B) Local MHMR hospital. See (GAP) §87.69 of this title (relating to Commitment to State Mental Hospitals) for commitment procedures; or]~~

~~(B) [(C)] [in a] private [psychiatric] hospital for emergency psychiatric care, if the TJJD crisis stabilization unit is [above alternatives are] not available.~~

(2) If a youth is placed in [On admission to] a private hospital, TJJD [TYC] staff [shall] seek copies of evaluations performed by the hospital, forward all reports to the TJJD crisis stabilization unit [TYC Corsicana Stabilization Unit], and submit a referral packet to the stabilization unit as soon as possible.

(3) An extension past seven days in a private psychiatric hospital must be approved by the division director over treatment services [assistant deputy executive director of rehabilitation services and director of contract and support programs].

(4) A youth [Youth] may remain in a private [psychiatric] hospital only until he/she is sufficiently stabilized to allow safe movement to a TJJD crisis stabilization unit, [the Corsicana Stabilization Unit] as determined by the hospital physician.

§380.8775. *Program Services for Youth with Intellectual Disabilities [Offenders with Mental Retardation].*

(a) Purpose. The Texas Juvenile Justice Department (TJJD) operates a residential treatment program that [The Corsicana Residential Treatment Center (CRTC)] provides specialized program services for youth identified with a high [Priority 4] need for intellectual disability [mental retardation] services. The purpose of this rule is to [The rule will] establish admission criteria and procedures[;] and release/transfer [release, transition or transfer] options [for youth with mental retardation].

(b) Definitions. [Explanation of Terms Used.]

(1) Except as noted in paragraph (2) of this subsection, see §380.8501 for definitions of terms used in this rule.

(2) High Need for Intellectual Disability Services--has the meaning assigned in §380.8751 of this title. [Priority 4: Specialized Mental Retardation Services--specialized mental retardation services are required for youth who, based upon the results of an appropriate psychological assessment, are diagnosed with moderate to severe mental retardation and corresponding deficits in adaptive functioning, according to the guidelines published in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.]

(c) Admission [Admissions] Criteria. Youth from a high restriction [secure] residential facility may be [program will be] admitted to the TJJD residential treatment program if a high [CRTC if a Priority 4] need for intellectual disability [mental retardation] services has been established.

(d) Program Requirements. Youth diagnosed with an intellectual disability are provided an individualized case plan to enable their

progress toward meeting treatment goals [The CRTC will adapt the agency's Resocialization program to enable the progress of youth diagnosed with mental retardation. These adaptations will be documented in the youth's Individual Case Plan].

(e) Release, Transfer, and Transition Options.

(1) Youth in the TJJD residential treatment program are eligible to be transitioned, released, or transferred to less restrictive settings when they meet criteria in §§380.8545, 380.8555, 380.8557, 380.8559, 380.8565, or 380.8569 [CRTC who meet criteria for transition, release or transfer according to §§85.45, 85.55, 85.59, 85.61, 85.65, or 85.69] of this title [may be transitioned to a less restrictive setting or paroled to the community or transferred to Texas Department of Criminal Justice (TDCJ)].

(2) Youth may be transferred or transitioned from the TJJD residential treatment program [CRTC] to an alternative placement if their functional ability improves to a level at which they can continue to progress toward their individual treatment goals [with identified program adaptations] in a general population setting.

(3) Youth who do not progress in the agency's rehabilitation [Resocialization] program for reasons other than an intellectual disability [mental retardation] may be administratively transferred to another facility in accordance with §380.8545 of this title [through the centralized placement unit (as an administrative transfer) for appropriate placement. For administrative transfer procedures, see §85.45 of this title].

(4) Youth in the TJJD residential treatment program [CRTC] who have completed the initial minimum length of stay and are unable to progress in the agency's rehabilitation program [Resocialization Program] due to an intellectual disability are discharged [mental retardation] in accordance with §380.8779 [§87.79] of this title [shall be discharged].

§380.8779. *Discharge of Non-Sentenced Offenders with Mental Illness or Intellectual Disability [Mental Retardation].*

(a) Purpose. The purpose of this rule is to provide criteria and a process for [whereby] the Texas Juvenile Justice Department (TJJD) to discharge [Youth Commission discharges] from its custody non-sentenced offender youth who have completed length of stay requirements and who are unable to progress in TJJD's [the agency's] rehabilitation programs because of mental illness or intellectual disability [mental retardation].

(b) Applicability. This rule does not apply to sentenced offender youth.

(c) Definitions. As used in this rule, the following terms have the following meanings:

(1) Intellectual Disability--means "mental retardation" as used in Texas Human Resources Code §244.011 and §244.012 and has the definition assigned by Texas Health and Safety Code §591.003.

(2) Mental Illness--has the meaning assigned by Texas Health and Safety Code §571.003.

(d) ~~(e)~~ General Provisions.

(1) A determination of whether a youth is able to progress in TJJD's [the agency's] rehabilitation programs is [will be] made on an individualized basis, considering factors such as [which may include, but are not limited to] the youth's level of functioning, abilities, strengths, needs, and past progress. The determination [will] also includes [include] a review of the supplemental interventions and/or program adaptations used to accommodate the youth's disability.

(2) All discharges under this rule require the approval of the executive director.

(e) ~~[(d)]~~ Discharge Eligibility Criteria.

(1) Youth with a mental illness who meet the following criteria must ~~[are unable to progress in the agency's rehabilitation programs shall]~~ be discharged ~~[- Such youth must meet the following criteria]:~~

(A) the youth has completed the initial minimum length of stay;

(B) the youth has been diagnosed with a ~~[major]~~ mental illness by a licensed psychologist or psychiatrist based on the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (e.g., psychotic disorder, bipolar disorder, major depressive disorder, organic disorder, severe neurological deficit); and

(C) the youth is not able to progress in TJJD's ~~[the agency's]~~ rehabilitation programs primarily because of the youth's mental illness.

(2) Youth with an intellectual disability ~~[mental retardation]~~ who meet the following criteria must ~~[are unable to progress in the agency's rehabilitation programs shall]~~ be discharged~~[- Such youth must meet the following criteria]:~~

(A) the youth has completed the initial minimum length of stay;

(B) the youth has been diagnosed with an Intellectual Developmental Disorder ~~[mental retardation]~~ by a licensed psychologist based upon the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association; and

(C) the youth is not able to progress in TJJD's ~~[the agency's]~~ rehabilitation programs primarily because of the intellectual disability ~~[mental retardation]~~.

(f) ~~[(e)]~~ Referrals for Follow-Up Services.

(1) Before a youth is discharged due to mental illness, a psychiatrist must ~~[shall]~~ examine the youth to determine whether the youth is in need of inpatient ~~[mental health services]~~ or outpatient mental health services.

(2) Before a youth is discharged due to mental illness, TJJD must:

(A) ~~[the agency will]~~ file an application for court-ordered mental health services as provided in Subchapter C, Chapter 574, Health and Safety Code, if the youth is not receiving such services~~[- The application will be for court-ordered inpatient mental health services if the psychiatrist determines such services are needed];~~ and

(B) ~~refer the youth to the local~~ ~~[the agency will notify the local]~~ Mental Health Authority in the youth's home county for mental health services.

(3) Before a youth is discharged due to intellectual disability, TJJD must refer the youth to ~~[mental retardation; the agency will notify]~~ the Local Authority (LA) in the youth's home county for intellectual disability services ~~[Mental Retardation Authority (MRA) in the youth's home county and provide a copy of the determination report if the youth is not already receiving mental retardation services]~~.

(4) Prior to discharge, all youth discharged under this rule must ~~[shall]~~ be referred:

(A) to the Texas Correctional Office on Offenders with Medical or Mental Impairments for continuity of care services; and

(B) for staffing with the Community Resource Coordination Group ~~that serves~~ ~~[to]~~ the county to which the youth will be discharged.

(g) ~~[(f)]~~ Effective Date of Discharge.

(1) Mental Illness Discharge.

(A) If the youth is already receiving court-ordered mental health services, discharge is effective immediately upon becoming eligible for discharge under subsection (e) ~~[(d)]~~ of this section.

(B) If the youth is not receiving court-ordered mental health services, discharge is effective the date the court enters an order regarding an application for court-ordered mental health services, or the 30th day after the application is filed, whichever occurs first.

(2) Intellectual Disability ~~[Mental Retardation]~~ Discharge.

(A) Discharge is effective on the date any action by the home county LA ~~[MRA]~~ is taken on the agency's application for intellectual disability ~~[mental retardation]~~ services or 30 days from the date of the application, whichever occurs first.

(B) If the youth is already receiving ~~[mental retardation]~~ services for the intellectual disability, discharge is effective immediately upon becoming eligible for discharge under subsection (e) ~~[(d)]~~ of this section.

*§380.8781. Referral of Sentenced Offenders to Court for Mental Health Services.*

(a) Purpose. The purpose of this rule is to provide criteria and a process for the Texas Juvenile Justice Department (TJJD) to refer ~~[whereby the Texas Youth Commission (TYC or agency) refers]~~ sentenced offender youth with mental illness to the committing juvenile court for inpatient ~~[in-patient]~~ mental health commitment proceedings.

(b) Applicability.

(1) This rule ~~[policy]~~ applies only to sentenced offender youth.

(2) This rule ~~[policy]~~ applies only to youth committed to TJJD ~~[TYC]~~ for offenses occurring on or after June 19, 2009.

(3) This rule ~~[policy]~~ does not apply to youth who are in need of commitment to a mental health facility only for crisis stabilization and/or acute care. See §380.8769 ~~[\$87-69]~~ of this title for such commitments.

(c) Definitions. Mental Illness--see definition in §380.8779 of this title.

(d) ~~[(e)]~~ General Provisions.

(1) A determination of whether a youth is able to progress in TJJD's ~~[the agency's]~~ rehabilitation programs will be made on an individualized basis, considering factors such as ~~[which may include, but are not limited to,]~~ the youth's level of functioning, abilities, strengths, needs, and past progress. The determination ~~[will]~~ also includes ~~[include]~~ a review of the supplemental interventions and/or program adaptations used to accommodate the youth's disability.

(2) All requests for hearings under this rule require the approval of the executive director.

(e) ~~[(d)]~~ Eligibility Criteria. TJJD ~~[TYC]~~ may seek a court hearing for inpatient ~~[in-patient]~~ mental health services pursuant to Texas Human Resources Code §244.0125 ~~[\$61-0773]~~ for a youth who:

(1) has been assessed as having a high need for specialized mental health programming, as defined in §380.8751 ~~[\$87-51]~~ of this title;



(2) has been diagnosed with a [major] mental illness by a licensed psychologist or psychiatrist based on the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (e.g., psychotic disorder, bipolar disorder, major depressive disorder, organic disorder, severe neurological deficit);

(3) as a result of the mental illness:

(A) is likely to cause serious harm to self or others; or

(B) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the ability to function independently, exhibited by an inability to provide for basic needs; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment.]; and]

[(4) primarily because of the mental illness; is not able to progress in the agency's rehabilitation programs; and]

[(5) has completed the minimum period of confinement, unless this requirement is waived due to exceptional circumstances, as determined and approved by the executive director on a case-by-case basis.]

(f) [(e)] Referral to Court. If the executive director approves the request for a hearing, appropriate TJJJ [TYC] staff will petition the committing juvenile court for the initiation of mental health commitment proceedings in accordance with Texas Human Resources Code §244.0125 [§61.0773].

§380.8785. Sex Offender Registration.

(a) Purpose. The purpose of this rule [policy] is to provide criteria and procedures to ensure compliance with sex offender registration requirements as provided in Chapter 62 of the Texas Code of Criminal Procedure, regarding registration of sex offenders who are in the custody of the Texas Juvenile Justice Department (TJJJ) [Youth Commission (TYC)].

(b) Applicability. This rule [only] applies only to youth who have a reportable adjudication as defined by Chapter 62 of the Texas Code of Criminal Procedure.

(c) Definitions. As used in this rule, the following terms [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) Reportable Adjudication--an adjudication of delinquent conduct for any of the offenses listed in Article 62.001, Texas Code of Criminal Procedure.

(2) Full Registration--a youth has a reportable adjudication and is required to register as a sex offender and verify registration with the local law enforcement authority.

(3) Non-Public Registration--a youth has a reportable adjudication and is required to register as a sex offender but the registration information is not public information.

(4) Deferred Registration--a youth has a reportable adjudication but the court has issued an order deferring the decision on whether to require registration.

(5) Excused or Waived Registration--a youth has a reportable adjudication but is not required to register as a sex offender because there is a court order exempting his/her duty to register.

(6) Completion of Treatment for a Sex Offense--a youth has successfully completed treatment for the sex offense when a licensed sex offender treatment provider verifies that the youth has, while in a secure residential TJJJ [TYC] placement, successfully completed a sexual behavior treatment program as identified in the youth's individual treatment plan.

(d) General Provisions.

(1) Each youth who has a reportable adjudication will receive treatment for the sex offense while committed to TJJJ [TYC].

(2) TJJJ submits [TYC will submit] sex offender registration information to the appropriate law enforcement agencies for each [all] youth required by law or court order to register as a sex offender.

(e) Full Registration. Before a youth with full registration requirements is released from a secure residential placement, TJJJ [TYC will]:

(1) ensures [ensure] that the level of risk to the community is determined and assigned according to §380.8787 [§87.87] of this title;

(2) ensures [ensure] that:

(A) all pre-release notifications located on the appropriate Texas Department of Public Safety (DPS) forms have been read and explained to the youth; and

(B) the youth has initialed and signed all appropriate forms; and

(3) at least seven calendar days before the date of release from a secure residential placement:

(A) completes [complete] all sex offender registration forms required by DPS;

(B) sends [send] the sex offender registration forms to:

(i) DPS; and

(ii) the appropriate local law enforcement authority in the county in which the youth is expected to reside; and

(C) ensures [ensure] a complete set of fingerprints, using the sex offender registration/verification fingerprint card form approved by DPS, and a current photograph of the youth are sent to DPS.

(f) Non-Public Registration. Before a youth with a non-public registration requirement is released from a secure residential placement, TJJJ [TYC will]:

(1) completes [complete] full registration as described in subsection (e) of this section; and

(2) includes [include] a cover letter stating the youth's registration is non-public and a copy of the non-public sex offender registration court order with the registration information submitted to DPS and the appropriate local law enforcement authority in the county in which the youth is expected to reside.

(g) Deferred Registration.

[(1) Unless TYC receives a court order requiring the youth to register as a sex offender, TYC will not complete sex offender registration for any youth with a deferred registration order if:]

[(A) the youth successfully completes treatment for the sex offense; or]

[(B) the order defers the decision on whether to require the youth to register beyond the release date from a secure TYC facility.]

(1) [(2)] For any youth with a deferred registration order:

(A) if the youth successfully completes treatment for the sex offense, TJJD sends notification that the youth has completed treatment for the sex offense [TYC will send written notice] to the court that issued the deferred registration order and the district attorney within ten calendar days following verification of completion of treatment for the sex offense; or

(B) if the youth does not successfully complete treatment for the sex offense, [:]

[(#)] not later than ten calendar days before [prior to] release or discharge, TJJD sends [TYC will send] written notice to the court that issued the deferred registration court order and the prosecuting attorney stating that the youth did not successfully complete treatment for the sex offense; and

(2) [(ii)] TJJD completes [if the youth is required to register, TYC will require the youth to complete] all required registration documents and submits [will submit] the registration information as described in subsection (e) or (f) of this section if required by law. [; as applicable, unless the court schedules a hearing or sends a court order exempting the registration requirement.]

(h) Notification of Changes in Status.

(1) If TJJD [TYC] receives information that a youth who is required to register as a sex offender has any changes which affect proper supervision of the youth such as [; including but not limited to] name changes, changes to physical health, job, incarceration, or conditions of parole, TJJD notifies [TYC will notify] the local law enforcement authority of the change(s) on the appropriate DPS sex offender registration form within ten calendar days following receipt of the information.

(2) If TJJD [TYC] receives information that a youth who is required to register as a sex offender has changed or intends to change address, TJJD notifies [TYC will notify] the local law enforcement authority of the change on the appropriate DPS sex offender registration form:

(A) at least seven calendar days before [prior to] the change of address; [;] or

(B) no more than three calendar days after obtaining the information if the information was not known prior to the change of address.

(i) Interstate Compact for Juveniles.

(1) For out-of-state youth who are accepted to reside in Texas under cooperative parole supervision and who have been adjudicated for an offense under the laws of another state or federal law that contains elements that are substantially similar to an offense requiring registration under Chapter 62 of the Texas Code of Criminal procedure:

(A) TJJD ensures [TYC will ensure] compliance with Texas laws requiring sex offender registration; and

(B) if the youth has an out-of-state order excusing sex offender registration, TJJD completes [TYC will complete] full registration in Texas:

(i) unless the duty to register is waived or exempted by an order issued by a Texas court; or

(ii) until the duty to register expires.

(2) For youth who are required to register as sex offenders in Texas and who are accepted to reside in other states under cooperative parole supervision, TJJD notifies [TYC will notify] the appropriate

registering agency in the receiving state of the youth's registration in Texas.

§380.8789. *Use of Clinical Polygraph in the Sexual Behavior Treatment Program.*

(a) Purpose. The purpose of this rule is to provide limitations and clinical oversight for the use of [the] clinical polygraph examinations in the treatment of sex offenders.

(b) General Provisions.

(1) [(b)] The Texas Juvenile Justice Department [Youth Commission] approves the use of clinical [a] polygraph examinations for certain selected youth admitted to [involved in treatment in] the agency's [approved] Sexual Behavior Treatment Program (SBTP). Use of the clinical polygraph is strictly controlled and must be approved in each instance by qualified clinical professionals.

(2) [(e)] All polygraphs are administered:

(A) by a licensed polygraph examiner [and] in accordance with the state guidelines for clinical polygraph examination of sex offenders; and

(B) in a setting that provides [ensuring] dignity and [as much] privacy for the youth to the extent [as] possible.

(3) [(d)] A youth may be considered [a candidate] for a polygraph if the youth:

(A) [(+)] has been adjudicated for a sexual offense;

(B) [(2)] has been admitted to the SBTP and has completed the initial SBTP evaluation; and

(C) [(3)] is not making [substantial] progress in the treatment program.

(4) [(e)] A youth will not be considered for a polygraph if the youth:

(A) [(+)] is self-abusive;

(B) [(2)] is suicidal;

(C) [(3)] has been diagnosed with a major psychiatric disorder such as psychosis, major depression, or bipolar disorder; or

(D) [(4)] is younger than age 14 [fourteen (14)].

§380.8791. *Family Reintegration of Youth with Sexual Behavior Treatment Needs [Sex Offenders].*

(a) Purpose. The purpose of this rule is to provide protection for victims or potential victims [the victim or potential victim] of youth with a high or moderate need for sexual behavior treatment [documented sex offenders who are returning home and the victim or potential victim lives in the home].

(b) Applicability. This rule [also] applies to youth [offenders] who have been assessed as having a high or moderate need for sexual behavior treatment in accordance with §380.8751 of this title [adjudicated for a sexual offense or as a result of a plea bargain for the arrest of a sexual offense].

(c) [(b)] Definitions. As used in this rule, the following terms [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) Family--[as used herein, shall refer to] the family members who live in the designated home placement, including the victim or potential victim(s).

(2) Victim--[shall refer to] a person who, as the result of the sexual offense, suffers a pecuniary loss, personal injury, or harm.

(3) Potential Victim--[shall refer to] a person who has a demographic profile similar to the victim [of the delinquent's sexual offense, such as gender, age, etc.], or who has a profile that triggers the youth's [delinquent's] deviant or abusive sexual arousal patterns.

(4) High or Moderate Need for Sexual Behavior Treatment--see definition in §380.8751 of this title.

(d) [(e)] Criteria [Requirements] for Family Reintegration. Before approving [Prior to TYC's approval of] a youth's return to a home where a victim or potential victim resides, the Texas Juvenile Justice Department [TYC shall]:

(1) verifies [verify] that the parole officer has completed a home evaluation, parole individual case plan, conditions of parole, and a checklist that identifies strategies to minimize risk factors associated with sexual re-offending;

(2) contacts [contact] the Texas Department of Family and Protective Services to determine whether there is an open or closed Child Protective Service (CPS) case and considers [consider] any concerns of CPS staff related to the victim or other vulnerable children in the home;

(3) if the victim is in treatment, notifies [notify] the victim's therapist that the youth is returning to the home where the victim resides and considers [consider] any concerns raised by the therapist regarding the youth's return; and

(4) verifies [verify] that the youth has demonstrated sufficient progress in treatment to be ready to return home as evidenced by:

(A) [demonstrated sufficient progress in treatment to be ready to return home as evidenced by the] completion of the highest stage in the agency's rehabilitation program; and/or

(B) completion of the assigned sexual behavior treatment program; and/or [and]

(C) [(B)] participation [participated] in the development and presentation to the family of a safety and family reintegration plan that contains specific plans to cope with high-risk situations.

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 August 12, 2014.

TRD-201403792

Chelsea Buchholtz

General Counsel

Texas Juvenile Justice Department

Effective date: September 28, 2014

Proposal publication date: September 28, 2014

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



### 37 TAC §380.8763, §380.8795

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

The repeal is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8763. Main Campus--Corsicana Residential Treatment Center.

§380.8795. New Treatment Programs.

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 August 12, 2014.

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General Counsel

Texas Juvenile Justice Department

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



## PART 13. TEXAS COMMISSION ON FIRE PROTECTION

### CHAPTER 441. CONTINUING EDUCATION

#### 37 TAC §§441.7, 441.11, 441.13, 441.15, 441.17, 441.19, 441.21

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 441, Continuing Education, concerning §441.7, Continuing Education for Structure Fire Protection Personnel, §441.11, Continuing Education for Marine Fire Protection Personnel, §441.13, Continuing Education for Fire Inspection Personnel, §441.15, Continuing Education for Arson Investigator or Fire Investigator, §441.17, Continuing Education for Hazardous Materials Technician, §441.19, Continuing Education for Head of a Fire Department, and §441.21, Continuing Education for Fire Service Instructor.

The purpose of the proposed amendments is to clarify language regarding continuing education requirements for the various disciplines of commission certification.

Tim Rutland, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is clear and concise rules regarding continuing education for individuals who hold commission certification in the various disciplines. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and

duties; §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

*§441.7. Continuing Education for Structure Fire Protection Personnel.*

(a) A minimum of two hours of continuing education in structure fire protection subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as structure fire protection personnel and who are appointed to structure fire protection duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from [either] Level 1, Level 2, or a combination of both [the two].

*§441.11. Continuing Education for Marine Fire Protection Personnel.*

(a) A minimum of two hours of continuing education in marine fire protection subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as marine fire protection personnel and who are appointed to marine fire protection duties for any certification period beginning after October 31, 1993.

(b) Subjects selected to satisfy the continuing education requirement may be selected from [either] Level 1, Level 2, or a combination of both [the two].

*§441.13. Continuing Education for Fire Inspection Personnel.*

(a) A minimum of two hours of continuing education in fire inspection subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as fire inspection personnel and who are appointed to fire inspection duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from [either] Level 1, Level 2, or a combination of both [the two].

*§441.15. Continuing Education for Arson Investigator or Fire Investigator.*

(a) A minimum of two hours of continuing education in arson or fire investigation subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as arson investigation or fire investigation personnel and who are appointed to arson or fire investigation duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from [either] Level 1, Level 2, or a combination of both [the two].

*§441.17. Continuing Education for Hazardous Materials Technician.*

(a) Eight hours of continuing education in hazardous materials (technician level) will be required for individuals certified as a hazardous materials technician. This will be in addition to continuing education required by other sections of this chapter.

(b) Subjects selected to satisfy the continuing education requirement may be selected from [either] Level 1, Level 2, or a combination of both [the two].

*§441.19. Continuing Education for Head of a Fire Department.*

(a) A minimum of two hours of continuing education in fire administration subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as head of a fire department and who are appointed as head of a department.

(b) Subjects selected to satisfy the continuing education requirement may be selected from [either] Level 1, Level 2, or a combination of both [the two].

*§441.21. Continuing Education for Fire Service Instructor.*

(a) A minimum of two hours of continuing education in fire service instruction subjects in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for individuals certified as a fire service instructor and who are appointed to fire service instructor duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from [either] Level 1, Level 2, or a combination of both [the two].

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

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813

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CHAPTER 449. HEAD OF A FIRE DEPARTMENT

The Texas Commission on Fire Protection (the commission) proposes the repeal of §449.1, Minimum Standards for the Head of a Fire Department, §449.3, Minimum Standards for Certification as Head of a Suppression Fire Department, and §449.5, Minimum Standards for Certification as Head of a Prevention Only Department. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter. The commission also proposes new, Subchapter A, Minimum Standards For Head of a Suppression Fire Department concerning, §449.1, Minimum Standards for the Head of a Suppression Fire Department, §449.3, Minimum Standards for Basic Head of a Suppression Fire Department Certification, §449.5, Minimum Standards for Intermediate Head of a Suppression Fire Department Certification, §449.7, Minimum Standards for Advanced Head of a Suppression Fire Department Certification, §449.9, Minimum Standards for Master Head of a Suppression Fire Department Certification, and Subchapter B, Minimum Standards For Head of a Prevention Only Fire Department concerning, §449.201, Minimum Standards for the Head of a Prevention Only Fire Department, §449.203, Minimum Standards for Basic Head of a Prevention Only Fire Department Certification, §449.205, Minimum Standards for Intermediate Head of a Prevention Only Fire Department Certification, §449.207, Minimum Standards for Advanced Head of a Prevention Only Fire Department Certification, and §449.209, Minimum Standards for Master Head of a Prevention Only Fire Department Certification.

The purpose of the proposed repeal is to replace those sections with new sections that will allow higher levels of certification within the Head of a Department discipline. The purpose of the new sections is it will bring this discipline in line with other commission disciplines that include higher levels of certification.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed repeal and new sections is in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed repeal and new sections are in effect, the public benefit from the passage is a clear and concise set of rules allowing for obtaining higher levels of certification within the Head of a Department discipline. There will be no effect on micro businesses, small businesses or persons required to comply with the new chapter as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed repeal and new sections may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.

### 37 TAC §§449.1, 449.3, 449.5

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

The repeal is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed repeal implements Texas Government Code §419.008 and §419.032.

*§449.1. Minimum Standards for the Head of a Fire Department.*

*§449.3. Minimum Standards for Certification as Head of a Suppression Fire Department.*

*§449.5. Minimum Standards for Certification as Head of a Prevention Only Department.*

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

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



## SUBCHAPTER A. MINIMUM STANDARDS FOR HEAD OF A SUPPRESSION FIRE DEPARTMENT

### 37 TAC §§449.1, 449.3, 449.5, 449.9

The new sections are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed new sections implement Texas Government Code §419.008 and §419.032.

*§449.1. Minimum Standards for the Head of a Suppression Fire Department.*

(a) An individual who becomes employed and is assigned as the head of a suppression fire department must be certified by the commission as Head of a Suppression Fire Department, within one year of appointment.

(b) An individual appointed head of a suppression fire department must be eligible to be certified at the time of the appointment or will become eligible to be certified within one year of the appointment and must submit an affidavit verifying eligibility status at the time of the appointment if not holding a commission certification.

(c) Holding the Head of a Suppression Fire Department certification does not qualify an individual for any other certification. An individual who seeks certification in another discipline must meet the requirements for that discipline.

(d) Nothing contained in this chapter shall be construed to supersede Chapter 143, Local Government Code, in regard to appointment of a head of a suppression fire department.

(e) Individuals certified as the Head of a Suppression Fire Department must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

(f) An individual certified as Head of a Suppression Fire Department under this subchapter may engage in fire fighting activities only as the head of a suppression fire department. These activities include incident command, direction of fire fighting activities or other emergency activities typically associated with fire fighting duties, i.e. rescue, confined space and hazardous materials response.

*§449.3. Minimum Standards for Basic Head of a Suppression Fire Department Certification.*

(a) Applicants for Basic Head of a Suppression Fire Department Certification must complete the following requirements:

(1) must be appointed as head of a suppression fire department; and

(2) complete the Standards Review Assignment for Head of a Fire Department identified in the applicable chapter of the Certification Curriculum Manual; and

(3) meet with a Texas Commission on Fire Protection Compliance Section representative for review and approval of the Standards Review Assignment; and

(4) attend at least one Texas Commission on Fire Protection regularly scheduled commission meeting or one regularly scheduled fire fighter advisory committee meeting in the first year of appointment; and

(5) document completion of the National Incident Management System courses 100, 200, 700, and 800; and

(6) hold a Texas Commission on Fire Protection certification as a fire protection personnel in any discipline that has a commission approved curriculum that requires structural fire protection per-

sonnel certification and five years experience within the last ten years in a full-time fire suppression position; or

(7) an individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress that is deemed equivalent to the commission's approved basic fire suppression curriculum and provide documentation in the form of a sworn nonself serving affidavit of five years experience within the last ten years in a full-time fire suppression position; or

(8) provide documentation in the form of a nonself serving sworn affidavit of ten years experience within the last fifteen years as an employee of a local governmental entity in a full-time structural fire protection personnel position in a jurisdiction other than Texas; or

(9) provide documentation in the form of a sworn nonself serving affidavit of ten years of experience within the last fifteen years as a certified structural part-time fire protection employee; or

(10) provide documentation in the form of a sworn nonself serving affidavit of ten years experience within the last fifteen years as an active volunteer fire fighter in one or more volunteer fire departments that meet the requirements of subsection (b) of this section.

(b) The ten years of volunteer service referenced in subsection (a)(10) must include documentation of attendance at 40% of the drills for each year and attendance of at least 25% of a department's emergencies in a calendar year while a member of a volunteer fire department or departments with ten or more active members that conducts a minimum of 48 hours of drills in a calendar year.

§449.5. *Minimum Standards for Intermediate Head of a Suppression Fire Department Certification.*

(a) Applicants for Intermediate Head of a Suppression Fire Department Certification must complete the following requirements:

(1) have a minimum of two years of experience in a full time head of a suppression fire department position; and

(2) hold, as a prerequisite, Basic Head of a Suppression Fire Department Certification through the commission; and

(3) hold Fire Officer II certification through the commission; and

(4) document completion of the National Incident Management System courses 300 and 400; and

(5) complete training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1, with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending

any school in the commission's Certification Curriculum Manual or for experience in fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level Head of a Fire Department Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§449.7. *Minimum Standards for Advanced Head of a Suppression Fire Department Certification.*

(a) Applicants for Advanced Head of a Suppression Fire Department Certification must complete the following requirements:

(1) have a minimum of four years of experience in a full time head of a suppression fire department position; and

(2) hold, as a prerequisite, an Intermediate Head of a Suppression Fire Department Certification through the commission; and

(3) hold Fire Officer III certification through the commission; and

(4) complete training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1, with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level Head of a Fire Department Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§449.9. *Minimum Standards for Master Head of a Suppression Fire Department Certification.*

(a) Applicants for Master Head of a Suppression Fire Department Certification must complete the following requirements:

(1) have a minimum of six years of experience in a full time head of a suppression fire department position; and

(2) hold, as a prerequisite, an Advanced Head of a Suppression Fire Department Certification through the commission; and

(3) hold Fire Officer IV certification through the commission; and

(4) acquire 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Head of a Suppression Fire Department Certification.

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

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Tim Rutland

Executive Director

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For further information, please call: (512) 936-3813



## SUBCHAPTER B. MINIMUM STANDARDS FOR HEAD OF A PREVENTION ONLY FIRE DEPARTMENT

### 37 TAC §§449.201, 449.203, 449.205, 449.207, 449.209

The new sections are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed new sections implement Texas Government Code §419.008 and §419.032.

#### §449.201. Minimum Standards for the Head of a Prevention Only Fire Department.

(a) An individual who becomes employed and is assigned as the head of a prevention only fire department must be certified by the commission as Head of a Prevention Only Fire Department, within one year of appointment.

(b) An individual appointed head of a prevention only fire department must be eligible to be certified at the time of the appointment or will become eligible to be certified within one year of the appointment and must submit an affidavit verifying eligibility status at the time of the appointment if not holding a commission certification.

(c) Holding the Head of a Prevention Only Fire Department certification does not qualify an individual for any other certification. An individual who seeks certification in another discipline must meet the requirements for that discipline.

(d) Nothing contained in this chapter shall be construed to supersede Chapter 143, Local Government Code, in regard to appointment of a head of a prevention only fire department.

(e) Individuals certified as the Head of a Prevention Only Fire Department must meet the continuing education requirement as provided for in Chapter 441 of this title (relating to Continuing Education).

#### §449.203. Minimum Standards for Basic Head of a Prevention Only Fire Department Certification.

Applicants for Basic Head of a Prevention Only Fire Department Certification must complete the following requirements:

(1) must be appointed as head of a prevention only fire department; and

(2) complete the Standards Review Assignment for Head of a Fire Department identified in the applicable chapter of the Certification Curriculum Manual; and

(3) meet with a Texas Commission on Fire Protection Compliance Section representative for review and approval of the Standards Review Assignment; and

(4) attend at least one Texas Commission on Fire Protection regularly scheduled commission meeting or one regularly scheduled fire fighter advisory committee meeting in the first year of appointment; and

(5) documentation of completion of National Incident Management System 100, 200, 700 and 800; and

(6) hold a Texas Commission on Fire Protection certification as a fire inspector, fire investigator, or arson investigator and have five years experience within the last ten years in a full-time fire prevention position; or

(7) an individual from another jurisdiction who possesses valid documentation of accreditation from the International Fire Service Accreditation Congress that is deemed equivalent to the commission's approved basic arson investigator, fire investigator or fire inspector curriculum and provide documentation in the form of a sworn non self serving affidavit of five years experience within the last ten years in a full-time fire prevention position; or

(8) provide documentation in the form of a sworn non self serving affidavit of ten years experience within the last fifteen years as an employee of a local governmental entity in a full-time fire inspector, fire investigator, or arson investigator position in a jurisdiction other than Texas; or

(9) provide documentation in the form of a sworn non self serving affidavit of ten years experience within the last fifteen years as a certified fire investigator, fire inspector or arson investigator as a part-time fire prevention employee; or

(10) provide documentation in the form of a sworn non self serving affidavit of ten years fire prevention experience within the last fifteen years as an active volunteer fire inspector, fire investigator or arson investigator.

#### §449.205. Minimum Standards for Intermediate Head of a Prevention Only Fire Department Certification.

(a) Applicants for Intermediate Head of a Prevention Only Fire Department Certification must complete the following requirements:

(1) have a minimum of two years of experience in a full time head of a prevention only fire department position; and

(2) hold, as a prerequisite, a Basic Head of a Prevention Only Fire Department Certification through the commission; and

(3) hold Fire Officer II certification through the commission; and

(4) document completion of National Incident Management System 300 and 400; and

(5) complete training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses

are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1, with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level Head of a Fire Department Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§449.207. Minimum Standards for Advanced Head of a Prevention Only Fire Department Certification.

(a) Applicants for Advanced Head of a Prevention Only Fire Department certification must complete the following requirements:

(1) have a minimum of four years of experience in a full time head of a prevention only fire department position; and

(2) hold, as a prerequisite, an Intermediate Head of a Prevention Only Fire Department through the commission; and

(3) hold Fire Officer III certification through the commission; and

(4) complete training listed in one of the following options:

(A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

(B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or

(C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1, with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

(b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in fire service, may not be counted toward this level of certification.

(c) The training required in this section must be in addition to any training used to qualify for any lower level Head of a Fire Department Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

§449.209. Minimum Standards for Master Head of a Prevention Only Fire Department Certification.

(a) Applicants for Master Head of a Prevention Only Fire Department Certification must complete the following requirements:

(1) have a minimum of six years of experience in a full time head of a prevention only fire department position; and

(2) hold, as a prerequisite, an Advanced Head of a Prevention Only Fire Department Certification through the commission; and

(3) hold Fire Officer IV certification through the commission; and

(4) acquire 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Head of a Prevention Only Fire Department Certification.

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

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Executive Director

Texas Commission on Fire Protection

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## CHAPTER 457. MINIMUM STANDARDS FOR INCIDENT SAFETY OFFICER CERTIFICATION

### 37 TAC §457.3

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 457, Minimum Standards for Incident Safety Officer Certification, concerning §457.3, Minimum Standards for Incident Safety Officer Certification.

The purpose of the proposed amendments is to delete language referencing specific courses that do not meet commission requirements for certification as Incident Safety Officer.

Tim Rutland, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is clear and concise rules regarding requirements for commission certification as Incident Safety Officer. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [info@tcfp.texas.gov](mailto:info@tcfp.texas.gov). Comments will be reviewed and discussed at a future commission meeting.



The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel certification.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§457.3. *Minimum Standards for Incident Safety Officer Certification.* In order to be certified as an Incident Safety Officer an individual must:

- (1) hold commission certification as Fire Officer I and;
- (2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Incident Safety Officer; or
- (3) complete a commission approved Incident Safety Officer program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Incident Safety Officer program must consist of one of the following:

(A) completion of a commission approved Incident Safety Officer curriculum as specified in the applicable chapter of the commission's Certification Curriculum Manual; or

~~(B) completion of the National Fire Academy Incident Safety Officer course; or~~

~~(C) completion of the Fire Department Safety Officers Association Incident Safety Officer course; or~~

(B) ~~(D)~~ completion of an out-of-state, educational institution of higher education, and/or military training program that has been submitted to the commission for evaluation and found to be equivalent to, or exceeds the commission approved Incident Safety Officer curriculum.

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

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Executive Director

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 15. TEXAS VETERANS COMMISSION

#### CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

##### 40 TAC §§452.1 - 452.5, 452.8

The Texas Veterans Commission (commission) proposes to amend §452.1, concerning Charges for Copies of Public Records; §452.2, concerning Advisory Committees; §452.3,

concerning Negotiated Rulemaking; §452.4, concerning Alternative Dispute Resolution; §452.5, concerning Petition for Adoption of Rules; and §452.8, concerning Employee Training and Education, located in Title 40, Part 15 of the Texas Administrative Code.

#### PART I. PURPOSE AND BACKGROUND

#### PART II. EXPLANATION OF SECTIONS

#### PART III. IMPACT STATEMENTS

#### PART IV. COMMENTS

#### PART V. STATUTORY AUTHORITY

#### PART I. PURPOSE AND BACKGROUND

The proposed amendments are made following a comprehensive rule review of the chapter to better reflect current commission procedures and to clarify where needed. The proposed amendments delete or replace obsolete references, and include minor grammatical and formatting revisions to simplify or clarify the rules.

#### PART II. EXPLANATION OF SECTIONS

##### §452.1. Charges for Copies of Public Records.

The proposed amendments in this section delete outdated references and update the authority for charges allowed by the commission. Other proposed amendments delete obsolete paragraph (a)(1), and reformat this section to include new subsections (a) and (b).

##### §452.2. Advisory Committees.

Proposed amendments in this section update the terms "commission" and "executive director" in lowercase to be consistent throughout the chapter. Other proposed amendments to §452.2(a)(5) and §452.2(a)(7) include minor grammatical and reference corrections.

The proposed amendments to §452.2(c)(2) include new language and reformatting to add new subparagraphs (A) - (C). These changes clarify the agency's conflict of interest policy for the Fund for Veterans' Assistance Advisory Committee members who are also officers, directors or employees of organizations that have an open grant or have applied for a grant while serving on the committee.

##### §452.3. Negotiated Rulemaking.

The proposed amendment to §452.3(b)(1) corrects the citation of the statute referenced.

##### §452.4. Alternative Dispute Resolution.

Proposed amendments replace the term "board" with "commission" throughout this section. Other proposed amendments include minor grammatical and reference corrections.

The proposed amendments in §452.4(a) correct the citations of statutes referenced, and replaces an outdated reference with "Administrative Procedure Act" to match the commission's current ADP procedure.

The proposed amendment to §452.4(b) deletes the outdated reference to "Director of Human Resources" and replaces it with the correct title, "Chief Administrative Officer."

##### §452.5. Petition for Adoption of Rules.

Proposed amendments to §452.5(b) and §452.5(h)(2) correct the citations of the statutes referenced.

The proposed amendment to §452.5(d) updates the commission's physical and mailing addresses.

#### §452.8. Employee Training and Education.

Proposed amendments throughout this section update the terms "commission" and "executive director" in lowercase to be consistent across the agency's rules.

The proposed amendment to §452.8(a) corrects the citation of the statute referenced.

Proposed amendments in §452.8(c) include minor formatting corrections.

### PART III. IMPACT STATEMENTS

Charlie C. Osborne, Jr., Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of the proposed amended rules.

There are no anticipated economic costs to persons required to comply with the proposed amended rules.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amended rules will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposed amended rules.

H. Karen Fastenau, General Counsel, Texas Veterans Commission, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing or administering the amended rules will be improved clarity and consistency of the agency's rules which make them easier to understand, apply and administer.

### PART IV. COMMENTS

Comments on the proposed amended rules may be submitted to Texas Veterans Commission, Attn: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Rule Amendments" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

### PART V. STATUTORY AUTHORITY

The amended rules are proposed under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; Texas Government Code §434.0101, granting the commission the authority to establish rules governing the agency's advisory committees; and pursuant to Texas Government Code Chapters 552, 656, 2001, 2008 and 2009.

No other statutes, articles or codes are affected by the proposed amended rules.

#### §452.1. Charges for Copies of Public Records.

(a) The charge to any person requesting copies of any public record of the Texas Veterans Commission will be calculated according to the charges [echarge] established by the Office of the Attorney General [Texas Building and Procurement Commission; however, the Texas Veterans Commission will charge the following amounts necessary to recoup the costs for the following].

~~[(1) Computer resources charges (mainframe and programming time): as determined by the Department of Licensing and Regulation.]~~

(b) ~~[(2)]~~ Copies of public records shall be furnished without charge or at a reduced charge if the executive director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

#### §452.2. Advisory Committees.

(a) The commission may establish advisory committees in accordance with Texas Government Code, Chapter 2110. The following shall apply to each advisory committee:

(1) Agency role. The executive director [Executive Director] may direct one or more staff members of the agency to assist each advisory committee. These positions shall be non-voting.

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

(5) Training. Each committee member shall receive initial training to ensure compliance with the Open Meetings Act. Training should also include an overview of the agency's mission and organizational structure, the overall purpose or goals of the committee, as well as other information that will assist members to accomplish committee goals.

(6) (No change.)

(7) Meetings. Each advisory committee shall meet at least quarterly unless otherwise directed by the commission. Advisory committee meetings may be conducted by telephone conference. Each advisory committee shall be subject to meeting at the call of the committee chair or designee. A quorum shall consist of a majority of the committee membership. The committees shall comply with Open Meetings Act requirements as provided in Texas Government Code, Chapter 551.

(8) (No change.)

(9) Evaluation and duration. Each advisory committee shall remain in existence as long as deemed necessary by the commission based on a regular evaluation of the continuing need for each advisory committee. The executive director [Executive Director] or staff may assist with this evaluation at the direction of the commission.

(b) (No change.)

(c) Fund for Veterans' Assistance Advisory Committee.

(1) (No change.)

(2) Committee member qualifications. ~~[Members may include representatives from veterans' organizations, non-profit or philanthropic organizations, veterans or family members of veterans, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.]~~

(A) Committee members may include representatives from veterans' organizations, non-profit or philanthropic organizations, veterans or family members of veterans, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

(B) Committee members may not include officers, directors or employees of organizations or entities that have an open Fund for Veterans' Assistance grant during the member's tenure or that intend to submit an application for a Fund for Veterans' Assistance grant.

(C) Committee members will be required to sign non-disclosure and conflict of interest agreements before reviewing grant applications. Committee members found in violation of the non-disclosure agreement will be prohibited from evaluating grant applications and making recommendations to the commission. Committee members found in violation of any agreement may also be removed from the committee by the commission.

(3) (No change.)

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

§452.3. *Negotiated Rulemaking.*

(a) (No change.)

(b) The commission's general counsel or designee shall be the commission's negotiated rulemaking coordinator (NRC). The NRC shall perform the following functions, as required:

(1) coordinate the implementation of the policy set out in subsection (a) of this section, and in accordance with the Negotiated Rulemaking Act, Chapter 2008, Texas Government Code;

(2) - (3) (No change.)

(c) (No change.)

§452.4. *Alternative Dispute Resolution.*

(a) The commission's policy is to encourage the resolution and early settlement of internal and external disputes, through voluntary settlement processes, which may include any procedure or combination of procedures described by Chapter 154, Civil Practice and Remedies Code. Any ADR procedure used to resolve disputes before the commission [board] shall comply with the requirements of Chapter 2009, Texas Government Code, and the Administrative Procedure Act, Chapter 2001, Texas Government Code [any model guidelines for the use of ADR issued by the State Office of Administrative Hearings].

(b) The commission's Chief Administrative Officer [Director of Human Resources] or designee shall be the commission's dispute resolution coordinator (DRC). The DRC shall perform the following functions, as required:

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

(3) collect data to evaluate the effectiveness of ADR procedures implemented by the commission [board].

(c) The commission, a committee of the commission, a respondent in a disciplinary matter pending before the commission, the executive director, or a commission employee engaged in a dispute with the executive director or another employee, may request that the contested matter be submitted to ADR. The request must be in writing, be addressed to the DRC, and state the issues to be determined. The person requesting ADR and the DRC will determine which method of ADR is most appropriate. If the person requesting ADR is the respondent in a disciplinary proceeding, the executive director shall determine if the commission [board] will participate in ADR or proceed with the commission's [board's] normal disciplinary processes.

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

(f) If the ADR process does not result in an agreement, the matter shall be referred to the commission [board] for other appropriate disposition.

§452.5. *Petition for Adoption of Rules.*

(a) (No change.)

(b) For the purpose of interpreting this section, the term "rule" shall have the same meaning as contained in Texas Government Code, [Chapter 2001,] §2001.003.

(c) (No change.)

(d) The petitioner may either hand deliver the petition to the commission's central office at 1700 North Congress Avenue, Suite 800, [1711 San Jacinto Boulevard,] Austin, Texas 78701, or mail the petition to P.O. Box 12277 [13047], Austin, Texas 78711-2277 [3047].

(e) - (g) (No change.)

(h) Not later than the 60th day after the date of submission of a petition under this section, the executive director shall either:

(1) (No change.)

(2) initiate rulemaking procedures and inform the petitioner of the date rule action by the commission is scheduled pursuant to Texas Government Code, [Title 40,] Chapter 2001.

(i) (No change.)

§452.8. *Employee Training and Education.*

(a) With the approval of the executive director [~~Executive Director~~], the commission [Commission] may make available to its administrators and employees funds for training and education that improves the performance of the employee's current or prospective duty assignment in accordance with the State Employees Training Act, Texas Government Code, Chapter 656, Subchapter C[, §§656.041 - 656.049].

(b) In order to be eligible for Agency supported training and education, the administrator or employee must demonstrate to the satisfaction of the executive director [~~Executive Director~~] that the training or education is related to the duties or prospective duties of the administrator or employee.

(c) Eligible training and education expenses that are approved by the executive director [~~Executive Director~~] may include, as appropriate, salary, tuition, and other fees, travel and living expenses, and/or training materials for the following:

(1) college degree programs [College Degree Programs];

(2) in-service training and education [In-Service Training and Education]; and/or

(3) out-of-agency staff development [Out-of-Agency Staff Development].

(d) The commission [Commission] may pay all or part of the expenses related to training and education as determined by the executive director [~~Executive Director~~], and may be adjusted at any time for any reason.

(e) An employee who completes training and education to obtain a degree or certification for which the commission [Commission] has provided all or part of the required fees must agree to remain in the employment of the commission [Commission] for a period of time as specified in the commission's [Commission's] Employee Policy and Administrative Procedure Manual.

(f) The commission [Commission] may impose such terms and conditions as may be reasonable and appropriate, including but not limited to, specifying the circumstances under which the assistance may be terminated and the employee may be required to repay the amount of assistance.

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 August 15, 2014.

TRD-201403891

H. Karen Fastenau

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: September 28, 2014

For further information, please call: (512) 463-1981



## CHAPTER 453. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

### 40 TAC §453.1

The Texas Veterans Commission (commission) proposes an amendment to §453.1, concerning Historically Underutilized Business Program, located in Title 40, Part 15 of the Texas Administrative Code.

#### PART I. PURPOSE AND BACKGROUND

#### PART II. EXPLANATION OF SECTION

#### PART III. IMPACT STATEMENTS

#### PART IV. COMMENTS

#### PART V. STATUTORY AUTHORITY

#### PART I. PURPOSE AND BACKGROUND

The proposed amendments are made following a comprehensive rule review of the chapter to better reflect current commission procedures and to clarify where needed. The proposed amendments delete or replace obsolete references and include minor formatting revisions to simplify or clarify the rule.

#### PART II. EXPLANATION OF SECTION

##### §453.1. Historically Underutilized Business Program.

The proposed amendments in this section delete outdated references and update the proper authorities and references cited in this section, and minor formatting revisions.

#### PART III. IMPACT STATEMENTS

Charlie C. Osborne, Jr., Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of the proposed amended rule.

There are no anticipated economic costs to persons required to comply with the proposed amended rule.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amended rule will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposed amended rule.

H. Karen Fastenau, General Counsel, Texas Veterans Commission, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing or administering the amended rule will be improved clarity and of the agency's rules which make them easier to understand, apply and administer.

#### PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attn: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Rule Amendments" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### PART V. STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §2161.003, which requires state agencies to adopt the rules of the Comptroller of Public Accounts which apply to the agency's construction projects and purchases of goods and services paid for with appropriated money.

No other statutes, articles or codes are affected by the proposed amended rule.

##### §453.1. *Historically Underutilized Business Program.*

In accordance with Texas Government Code §2161.003, the commission [~~Historically Underutilized Business Program. The Commission~~] adopts by reference the rules promulgated by the Comptroller of Public Accounts as [~~Texas Building and Procurement Commission (TBPC) that are~~] set forth in 34 [~~at 1~~] TAC Part 1, Chapter 20 [~~44~~], Subchapter B, [~~as amended,~~] regarding the Historically Underutilized Business Program. The Comptroller of Public Accounts rules are located at the Office of the Secretary of State's website: [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml). [A copy of the TBPC rules may be obtained by writing to: James E. Nier, Executive Director, Texas Veterans Commission, Stephen F. Austin Building, P.O. Box 12277, Austin, Texas 78711-2277 or by accessing the Web site of the Secretary of State, at [www.sos.state.tx.us/tac/](http://www.sos.state.tx.us/tac/).]

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 August 15, 2014.

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H. Karen Fastenau

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: September 28, 2014

For further information, please call: (512) 463-1981



## CHAPTER 455. TAPS PROGRAM

### 40 TAC §§455.3 - 455.5

The Texas Veterans Commission (commission) proposes an amendment to §455.3, concerning Definitions; §455.4, concerning Process; and §455.5, concerning Adoption of Standard

Form, located in Title 40, Part 15 of the Texas Administrative Code.

#### PART I. PURPOSE AND BACKGROUND

#### PART II. EXPLANATION OF SECTIONS

#### PART III. IMPACT STATEMENTS

#### PART IV. COMMENTS

#### PART V. STATUTORY AUTHORITY

#### PART I. PURPOSE AND BACKGROUND

The proposed amendments are made following a comprehensive rule review of the chapter to better reflect current commission procedures and to clarify where needed. The proposed amendments delete or replace obsolete references and include minor formatting revisions to simplify or clarify the rules.

#### PART II. EXPLANATION OF SECTIONS

##### §455.3. Definitions.

The proposed amendments in this section include adding punctuation at the end of the definition in §455.3(4), minor grammatical revisions to the definitions in §455.3(6) and §455.3(7) so they are consistent with language in the applicable statute, and a revision to the statute citation in §455.3(8).

##### §455.4. Process.

Proposed amendments in this section update the term "commission" in lowercase to be consistent throughout the chapter.

The proposed amendment in §455.4(a)(2) inserts language which allows for the designee of a funeral director to certify on Form TVCTAPS the sounding of "Taps" by a student at a military honors funeral that is directed by someone other than the funeral director at a funeral home (e.g., Fort Sam Houston National Cemetery).

##### §455.5. Adoption of Standard Form.

Proposed amendments in this section update the term "commission" in lowercase to be consistent throughout the chapter.

The proposed amendments in §455.5(a) inserts the name of the form, and states the purpose of the form for clarification.

The proposed amendments in Figure: 40 TAC §455.5(b) updates Form TVCTAPS to correct obsolete references and to reflect amendments proposed in this rulemaking.

#### PART III. IMPACT STATEMENTS

Charlie C. Osborne, Jr., Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of the proposed amended rules.

There are no anticipated economic costs to persons required to comply with the proposed amended rules.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amended rules will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Shawn Deabay, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposed amended rules.

H. Karen Fastenau, General Counsel, Texas Veterans Commission, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing or administering the amended rules will be improved clarity of the agency's rules which make them easier to understand, apply and administer.

#### PART IV. COMMENTS

Comments on the proposed amended rules may be submitted to Texas Veterans Commission, Attn: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to [rulemaking@tvc.texas.gov](mailto:rulemaking@tvc.texas.gov). For comments submitted electronically, please include "Rule Amendments" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### PART V. STATUTORY AUTHORITY

The amended rules are proposed under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.0072, which authorizes the agency to establish the Taps tuition voucher program.

The following statute is affected by the proposed amendments: Texas Education Code §54.344, concerning Participants in Military Funerals.

##### §455.3. Definitions.

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

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

(4) Commission--Texas Veterans Commission.

(5) (No change.)

(6) Funeral Director--An individual licensed by the Texas Funeral Service Commission responsible for directing the funeral service of a deceased [the] veteran.

(7) Taps--A musical tribute sounded on a bugle, trumpet, or cornet at military honors funerals held in the State of Texas for [a] deceased veterans [veteran].

(8) Institution of Higher Education and Private or Independent Institution of Higher Education--As defined by §61.003, Texas Education Code.

##### §455.4. Process.

(a) To receive a voucher through the Texas Veterans Commission, a student must:

(1) (No change.)

(2) provide proof that "Taps" was sounded by such student by completing and submitting Form TVCTAPS to the commission [Commission]. This form may be obtained from the funeral director, or designee, responsible for directing the veteran's funeral service;

(3) for each veteran funeral at which a student sounds "Taps," and for which the student has completed and submitted Form TVCTAPS to the commission [Commission], the commission

[Commission] shall award one (1) voucher in the amount of \$25.00 to be used as an exemption from tuition and required fees at an institution of higher education as defined by §61.003, Texas Education Code. This voucher will not have an expiration date;

(b) (No change.)

§455.5. *Adoption of Standard Form.*

(a) The commission [Commission] hereby adopts the standard form, Form TVCTAPS, identified below under subsection (b) of this section to certify [to be issued to a student for] the sounding of "Taps."

(b) The standard form hereby adopted by the commission [Commission] is the following:

Figure: 40 TAC §455.5(b)

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 August 15, 2014.

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H. Karen Fastenau

General Counsel

Texas Veterans Commission

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For further information, please call: (512) 463-1981



# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 26. FOOD AND NUTRITION DIVISION

##### SUBCHAPTER A. TEXAS SCHOOL NUTRITION POLICIES

###### 4 TAC §26.11

The Texas Department of Agriculture (TDA) adopts new §26.11, regarding school nutrition policies, without changes to the proposal published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4872). The new section is adopted in light of new federal nutrition standards and the recent repeal of the Texas Public School Nutrition Policy (TPSNP). The previous proposal repealed the state time and place policy established in 2004 and required schools to adopt local wellness policies either opting to have no time and place restrictions or outlining what those restrictions are at their respective schools. Many comments received opposed the repeal of the state policy. Due to responses received, TDA withdrew that rule proposal and filed a subsequent proposal that reestablished the parameters for a state time and place standard when no local policy exists.

The time and place restrictions in the new §26.11 allow for the local district to determine if the state policy or a local policy best addresses the needs of their district. The new section applies to public, charter, and private schools that participate in the National School Lunch and School Breakfast Program. The intent of the new section is to provide nutritional guidelines at the state level that are not addressed in federal regulations and ensure schools are able to address certain policies at the local level. New §26.11 is adopted to be effective September 1, 2014, to coincide with the beginning of the school year.

TDA received many comments on the proposal, primarily from school districts, including Aldine ISD, Alief ISD, Alvin ISD, American Heart Association, College Station ISD, Harlingen ISD, Houston ISD School Health Advisory Committee, Katy ISD, Klein ISD, Kona Ice, North East ISD, Northside ISD, Spring ISD, Venus ISD, and individuals.

Numerous comments were received in support of the proposed rule. Specifically, several commenters noted that they valued the time and place proposal as it would help establish a nutritionally sound school meal environment.

TDA also received many comments asking that local time and place policies be limited to a state standard and restrict the ability

of local governing bodies to implement unique standards. TDA reminds commenters that allowing for regulatory flexibility at the local level helps establish policies that best fit the needs of each community and TDA strives to create reasonable policies that do not utilize a "one size fits all" approach.

Several commenters requested that time and place standards proposed also apply to foods given away. TDA encourages commenters concerned about policies surrounding foods given away in the school setting to work with their local district to address this issue. School districts may adopt wellness policies that place restrictions related to foods given away.

TDA also received comments noting that fundraisers for food items, specifically at the elementary level, should be allowed any time during the school day, if the food item met federal nutrition standards. The adopted rule will allow for alternative time and place policies that would allow such food items to be sold, including policies that are less restrictive, to be adopted by school districts.

TDA received numerous comments not specifically related to the proposed rule. Specifically, TDA received comments referencing an expired policy commonly referred to as exempt-days. The former exempt-day policy provided for a limited number of days each year that foods sold or given away during the school day could be exempt from state nutrition standards. Those state nutrition standards were previously repealed, therefore the need for the exempt-days policy no longer exists. As for the new federal regulations, they do not apply to foods given away and they do not establish exempt-days when foods sold in schools can be exempt from these federal standards. The proposed time-and-place policy in no way proposes to reinstate or make stricter the former state nutrition standards for which exempt-days were allowed.

New §26.11 is adopted under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program; and the Code, §12.016, which authorizes the department to adopt rules as necessary for the administration of its powers and duties under the Code.

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 August 12, 2014.  
TRD-201403805



## TITLE 7. BANKING AND SECURITIES

### PART 2. TEXAS DEPARTMENT OF BANKING

#### CHAPTER 15. CORPORATE ACTIVITIES

##### SUBCHAPTER A. FEES AND OTHER PROVISIONS OF GENERAL APPLICABILITY

###### 7 TAC §15.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §15.4, concerning required information and abandoned filings, with changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5014), which will be republished.

Changes made to the proposed rule are in response to public comments received in writing, and are described in the summary of comments and responses section of this preamble.

The amended rule is adopted to allow the Texas Banking Commissioner (commissioner), upon a finding of good and sufficient cause, to grant an applicant additional time to complete a filing and to remove the more formal procedures for obtaining an extension that are currently in the rule. This provides an opportunity for applicants to continue to provide information needed by the department to make a meaningful evaluation and determination in processing filings.

The department deleted the current language in §15.4(c), which contained deadlines for an applicant to request more time to submit information in conjunction with an application and for the commissioner to act on such requests. The department amended §15.4(c) to state simply that the commissioner may grant an applicant additional time and that the commissioner will communicate his or her decision to the applicant before the expiration of the filing period.

The Department received comments regarding the proposed amendments from the Independent Bankers Association of Texas (IBAT) and International Bancshares Corporation (IBC).

Summaries of the comments and commission responses follow:

IBAT and IBC suggested that the department could amend the rule to state that applicants could submit additional requested information concerning the application electronically in satisfaction of the current requirement that submissions be in writing. IBC expressed a similar comment. The department already accepts these submissions electronically.

IBAT and IBC further suggested that the department could amend the rule to state that the 60 day period allowed for submitting additional information requested by the department would begin at the time of the request for the information, rather than at the time of the initial application. The department

declines to amend the rule in this way because doing so could extend the application process an unreasonable amount of time.

IBAT and IBC further suggested that the extension of time for completing the application should be granted upon a finding of good and sufficient cause, rather than being left to the sole discretion of the commissioner. The department agrees with this suggestion and has amended the language of the rule accordingly.

The amendment is adopted pursuant to Finance Code, §31.003, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle A, the Texas Banking Act, including rules to implement Subtitle A, and other provisions of general applicability to banks.

###### §15.4. *Required Information and Abandoned Filings.*

(a) Required information. The banking commissioner may investigate and evaluate facts related to a submitted filing or accepted filing to the extent necessary to reach an informed decision. The banking commissioner may require any person or entity connected with the matter to which the submitted or accepted filing pertains to submit additional information, including, but not limited to, an opinion of counsel with respect to a matter of law or an opinion, review or compilation prepared by a certified public accountant.

(b) On or before the 15th day after initial submission of an application, the banking commissioner shall issue a written notice informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Time limit for providing required information. An applicant must provide all information necessary for the banking commissioner to declare that a submission is an accepted filing, whether the information is required by form or rule or is requested by the department. The information must be provided to the department on or before the 61st day after the date of initial submission of the filing, except as otherwise provided by law. Upon a finding of good and sufficient cause, the banking commissioner shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(d) Abandoned filing. The banking commissioner may determine any submitted or accepted filing to be abandoned, without prejudice to the right to refile, if the information required by the Finance Code, this chapter, or any rule or regulation adopted pursuant to the Finance Code, or additional requested information, is not furnished within the time period specified by subsection (c) of this section or as requested by the banking commissioner in writing to the person or entity making the submission. The banking commissioner may determine a submitted or accepted filing for which fees required by the Finance Code or by this chapter are not paid within 30 days of receipt of the initial submission to be abandoned.

(e) Notice. The banking commissioner shall give written notice of any submitted or accepted filing considered to be abandoned. Notice of abandonment shall be effective upon mailing by the department. Fees paid related to an abandoned filing are nonrefundable.

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 August 15, 2014.

TRD-201403853





CHAPTER 21. TRUST COMPANY  
CORPORATE ACTIVITIES  
SUBCHAPTER A. FEES AND OTHER  
PROVISIONS OF GENERAL APPLICABILITY  
7 TAC §21.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §21.4, concerning required information and abandoned filings, with changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5014), which will be republished.

Changes in the proposed text are found in 7 TAC §21.4(c), and modify the basis for granting a request for extension of time to complete an application from the commissioner's sole discretion to a finding of good and sufficient cause.

The amended rule is adopted to allow the Texas Banking Commissioner (commissioner), upon a finding of good and sufficient cause to grant an applicant additional time to complete a filing. This provides an opportunity for applicants to continue to provide information needed by the department to make a meaningful evaluation and determination in processing the application.

The department deleted the current language in §21.4(c), which contained deadlines for an applicant to request more time to submit information in conjunction with an application and for the commissioner to act on such requests. The department amended §21.4(c) to state simply that the commissioner may grant an applicant additional time and that the commissioner will communicate his or her decision to the applicant before the expiration of the filing period.

The Department received no comments regarding the proposed amendments.

The amendment is adopted pursuant to Finance Code, §181.003, which authorizes the Finance Commission to adopt rules to accomplish the purposes of Subtitle F, the Texas Trust Company Act, including rules to implement Subtitle F.

§21.4. *Required Information and Abandoned Filings.*

(a) Required information. The banking commissioner may investigate and evaluate facts related to a submitted filing or accepted filing to the extent necessary to reach an informed decision. The banking commissioner may require any person or entity connected with the matter to which the submitted or accepted filing pertains to submit additional information, including, but not limited to, an opinion of counsel with respect to a matter of law or an opinion, review or compilation prepared by a certified public accountant.

(b) Accepted for filing. On or before the 15th day after initial submission of an application, the banking commissioner shall issue a written notice informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or

that the application is deficient and specific additional information is required.

(c) Time limit for providing required information. Unless otherwise provided for in the Trust Company Act, this chapter or rules and regulations adopted pursuant to the Trust Company Act, all required information necessary for the banking commissioner to declare that a submission is an accepted filing shall be provided to the department on or before the 61st day after the date of the initial submission of the filing. Upon a finding of good and sufficient cause, the banking commissioner shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(d) Abandoned filing. The banking commissioner may determine any submitted or accepted filing to be abandoned, without prejudice to the right to refile, if the information required by the Trust Company Act, this chapter, or any rule or regulation adopted pursuant to the Trust Company Act, or additional requested information, is not furnished within the time period specified by subsection (c) of this section or as requested by the banking commissioner in writing to the person or entity making the submission. The banking commissioner may determine a submitted or accepted filing for which fees required by the Trust Company Act or by this chapter are not paid within 30 days of receipt of the initial submission to be abandoned.

(e) Notice. The banking commissioner shall give written notice of any submitted or accepted filing considered to be abandoned. Notice of abandonment shall be effective upon mailing by the department. Fees paid related to an abandoned filing are nonrefundable.

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 August 15, 2014.

TRD-201403854  
Catherine Reyer  
General Counsel  
Texas Department of Banking  
Effective date: September 4, 2014  
Proposal publication date: July 4, 2014  
For further information, please call: (512) 475-1300



CHAPTER 33. MONEY SERVICES  
BUSINESSES

7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.13, concerning the process for obtaining a money services business license, with changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5015), which will be republished.

Changes in the proposed text are found in 7 TAC §33.13(f)(2), and modify the basis for granting a request for extension of time to complete an application from the commissioner's sole discretion to a finding of good and sufficient cause.

The amended rule is adopted to allow the Texas Banking Commissioner (commissioner), upon a finding of good and sufficient cause, to grant an applicant additional time to complete a filing and to remove the more formal procedures for obtaining an ex-

tension that are currently in the rule. This provides an opportunity for applicants to continue to provide information needed by the department to make a meaningful evaluation and determination in processing the application.

The department adopted a non-substantive amendment to §33.13(d)(2), which clarifies a reference to §33.13(d)(1) by adding the words "of this subsection."

The department deleted the current language in §33.13(f)(2) and all of current §33.13(f)(3), which contained deadlines for an applicant to request more time to submit information in conjunction with an application and for the commissioner to act on such requests. The department amended §33.13(f)(2) to state simply that the commissioner may grant an applicant additional time and that the commissioner will communicate his or her decision to the applicant before the expiration of the filing period. The following paragraph is renumbered accordingly.

The Department received no comments regarding the proposed amendments.

The amendment is adopted pursuant to Finance Code, §151.102, which authorizes the Finance Commission to adopt rules to implement Finance Code, Chapter 151 regarding money service businesses.

### §33.13. *How Do I Obtain a New License?*

(a) Does this section apply to me? This section applies if you seek a new money transmission or currency exchange license under Finance Code, Chapter 151.

(b) What must I do to apply for a license? To apply for a new money transmission or currency exchange license, you must:

- (1) submit an application on the form prescribed by the department; and
- (2) fully complete the application form and provide the information and documentation as specified in the application and the department's instructions.

(c) What does the application process generally involve? The banking commissioner will review your application and, as authorized by Finance Code, Chapter 151, investigate you, your principals including officers, directors and shareholders of a publically traded parent if the principal has 25% or more ownership of the applicant, and all related facts to determine if you possess the qualifications and satisfy the requirements for the license for which you apply. At any time during the review and investigation process, the commissioner may require such information as the commissioner considers necessary to evaluate your application, including an opinion of counsel or an opinion, review or compilation prepared by a certified public accountant. It is your responsibility to provide or cause to be provided all the information the commissioner requires.

(d) What is required for the department to begin processing my application?

(1) Your application must provide and be accompanied by the following at the time you submit the application to the department:

(A) your signature or the signature of your duly authorized officer, as applicable, sworn to before a notary, affirming that the information in the application and accompanying documentation is true;

(B) an application fee, in the amount established by commission rule, in the form of a check payable to the Texas Department of Banking;

(C) all required search firm reports; and

(D) if you are applying for a money transmission license:

(i) security in the amount of at least \$300,000 that complies with Finance Code, §151.308, and an undertaking to increase the amount of the security if additional security is required under that section; and

(ii) an audited financial statement demonstrating that you satisfy the minimum net worth requirement established by Finance Code, §151.307(a), and that, if the license is issued, you are likely to maintain the required minimum; or

(E) if you are applying for a currency exchange license:

(i) security in the amount of \$2,500 that complies with Finance Code, §151.308; and

(ii) a financial statement demonstrating your solvency.

(2) The department may refuse to process and may return to you an application submitted without all the items identified in paragraph (1) of this subsection. If you submit your application fee, but fail to include one or more of the other items identified in paragraph (1) of this subsection, the department will return or refund the fee or, if you promptly submit an application that includes the missing items, apply the fee to your subsequent application.

(e) When will the department tell me if my application is complete and accepted for filing? On or before the 15th day after the date the department receives your application, and if the application is not returned as provided for in subsection (d)(2) of this section, the department will notify you in writing that:

(1) your application is incomplete and the additional information specified in the notice is required before the department will accept your application for filing; or

(2) your application is complete and accepted for filing.

(f) When must I provide the additional information the department requires to consider my application complete and to accept it for filing?

(1) Subject to paragraph (2) of this subsection, the department must receive all information required to consider your application complete and to accept it for filing on or before the 61st day after the date the department receives your initial application.

(2) Upon a finding of good and sufficient cause, the banking commissioner shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(3) After reviewing the information you provide in response to the department's initial request for additional information, the department may determine that still more information is required to consider your application complete and to accept it for filing. The department will notify you in writing if further information is required and specify the date by which the department must receive the information.

(g) What happens if I do not provide the required information?

(1) The banking commissioner may determine that your application is abandoned, without prejudice to your right to file a new application, if the department does not receive the information required in the application and department's instructions or the additional information required by the department within the time specified in subsec-

tion (f) of this section or as otherwise requested by the commissioner in writing to you.

(2) The banking commissioner will notify you in writing if your application is considered abandoned. The commissioner's determination is effective the date the department mails you the notice and may not be appealed. The department will not refund the fee you paid in connection with the abandoned application.

(h) After the department accepts my application for filing, when will I know if the application is approved? On or before the 45th day after the date the department accepts your application for filing, the banking commissioner will approve or deny your application and advise you in writing of the decision.

(i) May I appeal the denial of my application? Yes. If the banking commissioner denies your application, you may appeal the denial in accordance with Finance Code, §151.205(b).

(j) What if the department does not comply with the application processing times? If the department fails to comply with the application processing times specified in subsections (e) or (h) of this section, you may file a complaint under §33.15 of this title (relating to Failure to Comply with Application Processing Times).

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 August 15, 2014.

TRD-201403855

Catherine Reyer

General Counsel

Texas Department of Banking

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Proposal publication date: July 4, 2014

For further information, please call: (512) 475-1300



### 7 TAC §33.27

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.27, concerning what fees must be paid to get and maintain a license. The amendments are adopted without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5016) and will not be republished.

The adopted amendments to §33.27 replace the fee assessment schedule formerly in subsection (h)(1) with two revised schedules in adopted subsection (e), one applicable to money transmission licensees and one applicable to currency exchange licensees. In addition, the annual license fee required by Finance Code §154.207, previously set forth in subsection (e), is now included in the assessment fee rather than separately charged and collected. Other adopted changes are for conforming purposes or to improve organization of §33.27.

Pursuant to Finance Code §16.003, the department is charged with responsibility for all direct and indirect costs of its existence and operation, and may not directly or indirectly cause the general revenue fund to incur any of such costs. Under Finance Code §151.102(a)(5), the commission may adopt rules as necessary or appropriate to recover the cost of administering and enforcing the Money Services Act and other applicable law by

imposing and collecting proportionate and equitable fees for notices, applications, examinations, investigations, and other actions required to achieve the purposes of the Money Services Act.

Most regulatory programs administered by the department are supported by similar language, requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of a fee charged by the department, whether the fee is for an application, an examination, or another purpose, is to enable the department to be self-supporting and each regulatory program to be self-sustaining. The department therefore must periodically evaluate its operations to determine whether the department's fee structure equitably allocates the cost of regulation as required by statute.

A key regulatory function for which the cost of operations is no longer adequately funded by existing fees is the required periodic examination of each licensed money services business. Adopted amendments to §33.27 increase the amount of the assessment paid by most money service businesses, and these adjustments are long overdue. The assessment has not been increased in eight years, see the August 25, 2006, issue of the *Texas Register* (31 TexReg 6643).

The adopted fee increases are necessary because revenue from assessments has not kept pace with the department's operational costs, which have increased over the years due to inflation, the need to attract, hire and retain qualified personnel, and the additional time, resources and attention required by the increasing complexity of money services business operations. The department believes that the fee adjustments will provide the funding required to currently administer and enforce the Money Services Act in a manner that is fair and equitable to all license holders.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §151.102(a), specifically §151.102(a)(5), which authorizes the commission to adopt rules necessary or appropriate to recover the cost of maintaining and operating the department and the cost of administering and enforcing Finance Code, Chapter 151, and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of Chapter 151.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201403856

Catherine Reyer

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Texas Department of Banking

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For further information, please call: (512) 475-1300



## TITLE 13. CULTURAL RESOURCES

## PART 2. TEXAS HISTORICAL COMMISSION

### CHAPTER 11. ADMINISTRATIVE DEPARTMENT SUBCHAPTER B. OFFICIAL CORPORATE SPONSORS

#### 13 TAC §§11.21 - 11.26

The Texas Historical Commission (Commission) adopts new Subchapter B, Official Corporate Sponsors, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4075). The rules will not be republished.

New Subchapter B includes §11.21, Definitions; §11.22, Designation of Official Corporate Sponsors; §11.23, Sponsorship Agreements; §11.24, Fundraising by Official Corporate Sponsors; §11.25, Donations; and §11.26, Advertising. The purpose of the new rules is to implement Senate Bill 615, which gives the Commission specific authority to contract with for-profit corporations and other entities to support the operations of the Commission and to give recognition to those corporations by designating them as official corporate sponsors (OCS).

The existing sections in Chapter 11, §§11.1 - 11.15, are now designated as Subchapter A, Administration, to distinguish them from the new rules in Subchapter B.

Section 11.21, relating to Definitions, defines terms used in Subchapter B including Commission brands, license, and official corporate sponsor. Section 11.22, relating to Designation of Official Corporate Sponsors, provides procedures and standards for the designation of official corporate sponsors and noting possible conflicts of interest. Section 11.23 describes requirements for a contractual relationship for designation. Section 11.24 describes requirements when fundraising activities are conducted by an OCS. Section 11.25 describes conditions for donations to the Commission by OCSs. Section 11.26 relates to advertising and provides limitations on the use of the Commission funds for projects involving an OCS.

No comments were received regarding the adoption of these rules.

These rules are adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of that chapter.

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 August 18, 2014.

TRD-201403924

Mark Wolfe

Executive Director

Texas Historical Commission

Effective date: September 7, 2014

Proposal publication date: May 30, 2014

For further information, please call: (512) 463-8817

## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

##### SUBCHAPTER B. LICENSING OF SALES AGENTS

#### 16 TAC §401.158, §401.160

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.158 and §401.160, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5027). The purpose of these amendments is to clarify the Commission's authority with regard to certain unauthorized purchases of lottery tickets by licensed retailers, and to clarify language regarding other lottery retailer requirements.

The Commission is granted broad authority and must exercise strict control and close supervision over all lottery games to promote and ensure integrity, security, honesty and fairness in the operation and administration of the lottery, including regulating the licensure and conduct of lottery ticket retailers and others under Texas Government Code, Chapter 466 (State Lottery Act), Subchapters D and G. In particular, the State Lottery Act prohibits a person from inducing another to assign or transfer the right to claim a prize, to offer for sale the right to claim a prize, or further, to offer for compensation to claim the prize of another. The Act also prohibits the sale of lottery tickets at unauthorized locations and by unauthorized, unlicensed individuals. Additionally, the State Lottery Act prohibits claiming, or aiding or agreeing to aid another to claim, a lottery prize by fraud or misrepresentation. A licensed retailer may have its license sanctioned for committing any prohibited conduct under the Act.

A public comment hearing was held on Tuesday, July 22, 2014, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing. The Commission received no written comments from any individuals during the public comment period.

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

This adoption implements Texas Government Code, Chapter 466, specifically, §§466.303, 466.308, 466.310 and 466.313.

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 August 12, 2014.

TRD-201403804

Bob Biard  
General Counsel  
Texas Lottery Commission  
Effective date: September 1, 2014  
Proposal publication date: July 4, 2014  
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## SUBCHAPTER D. LOTTERY GAME RULES

### 16 TAC §401.323

The Texas Lottery Commission (Commission) adopts new 16 TAC §401.323 ("MONOPOLY MILLIONAIRES' CLUB™" Game Rule). The new rule is adopted with non-substantive changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5029). These changes from the published proposal affect the administration of the game by the Multi-State Lottery Association (MUSL) and the National Premium Game Group Lotteries that will offer the MONOPOLY MILLIONAIRES' CLUB game, but do not directly impact players or change how the game is played.

The purpose of the new rule is to establish and share with the public the details of the game design, matrix, prize level structure and operation of the new MUSL national premium lottery draw game. The Commission anticipates sales for the new game will start on or about October 19, 2014, and the first drawing for the new game will occur on or about October 24, 2014, such dates being subject to change by MUSL and/or the Commission's Executive Director.

Specifically, the adopted version of the rule makes conforming changes consistent with recent revisions made by MUSL, including the following: (1) the trademark designation for the game now reads "MONOPOLY MILLIONAIRES' CLUB™"; (2) the official name for the jackpot prize will be "Top Prize" instead of "Jackpot Prize"; (3) the name of the million dollar prizes drawn when the Top Prize is won will be "Millionaires' Club Prize" instead of "MONOPOLY Club Prize"; (4) the term "Jackpot Prize Pool" will be changed to the "Top Prize and Millionaires' Club Prize Pool" (TP&MC Prize Pool) to fund both prizes and to include the contributions for both prizes less the amount to fund the Prize Reserve Account (PRA); (5) the terms "MONOPOLY Club Prize Pool" and the "Set-Aside Prize Pool" will be deleted because these funds are now provided for in the TP&MC Prize Pool and the PRA, respectively; (6) the last sentence in subsection (d)(1) will be deleted because it is redundant of language in subsection (d)(2)(E); (7) required "approval" will be changed to "review and comment" of the MUSL Finance & Audit Committee in subsection (d)(2)(D); (8) Figure: 16 TAC §401.323(d)(3)(A) will be amended to use four decimal points for the sales percentages, to update prize pool percentages and prize levels (1-11 instead of 1-10), and to correct the Top Prize & Millionaires' Club Prize percentage (%) of the Prize Pool from 64.4298 to 64.4296; (9) subsection (d)(3)(C)(i) has been deleted and subsection (d)(3)(C)(ii) has been revised to incorporate terms from the deleted subsection; (10) in subsection (e)(1)(B), a reference has been added relating to subsection (e)(4); (11) annuity factor determinations from subsection (e)(1)(B) have been deleted and moved to subsection (e)(4); (12) subsection (e)(8) adds a disclaimer making the subsection subject to state law and Commission rules; (13) at subsection (f)(4) and (5), the word "other" has been deleted and replaced with "any of the"; (14) subsection (g)(1)(D) adds Hasbro directors, officers and employees to the ineligible players list;

(15) subsection (g)(1)(E) makes re-lettering changes; and (16) at subsection (i)(6) the language "may permit or require" and "or the Commission requires" has been added for clarification purposes.

Additionally, the adopted version of the rule corrects typographical errors and, in subsection (e)(2), adds "for tickets sold by licensed sales agents in Texas and validated according to Commission rules," clarifying that the Texas Lottery will not pay prizes on tickets sold in other jurisdictions, deletes "may be paid" as it is unnecessary language, and adds "Set Prize" for clarification.

A public comment hearing was held on Tuesday, July 22, 2014, at 11:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing. The Commission received no written comments from any individuals during the public comment period.

The new rule is adopted under Texas Government Code Ann. §466.015(c)(1) - (4), which authorizes the Commission to adopt rules governing the operation of the lottery, including rules governing the type of lottery games to be conducted, the price of each ticket, the number of winning tickets and the amount of the prize paid on each winning ticket, and the frequency of the drawing or selection of a winning ticket; and under the authority of Texas Government Code Ann. §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption implements Chapter 466 of the Texas Government Code.

§401.323. "MONOPOLY MILLIONAIRES' CLUB™" Game Rule.

(a) MONOPOLY MILLIONAIRES' CLUB. MONOPOLY MILLIONAIRES' CLUB is a Multi-State Lottery Association (MUSL) national premium draw game offered by all Lotteries that have agreed to MUSL's National Premium Game Product Group Rules. MONOPOLY MILLIONAIRES' CLUB is authorized to be conducted in Texas by the executive director in accordance with the MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in conformance with state law. If a conflict arises between this section and §401.304 of this chapter (relating to On-line Game Rules (General)), this section shall have precedence. The purpose of the MONOPOLY MILLIONAIRES' CLUB game is the generation of revenue through the operation of a specially designed, national premium multi-jurisdiction lottery draw game that will award MONOPOLY MILLIONAIRES' CLUB prizes and, only when a Top Prize has been won in a MONOPOLY MILLIONAIRES' CLUB drawing, \$1 million Millionaires' Club prizes. In addition to other applicable rules contained in Chapter 401, this section and definitions apply unless the context requires a different meaning or is otherwise inconsistent with the intention of the rules adopted by MUSL or the MUSL National Premium Game Product Group. The conduct and play of MONOPOLY MILLIONAIRES' CLUB must conform to the MUSL National Premium Game Product Group MONOPOLY MILLIONAIRES' CLUB Game Rules.

(b) Definitions.

(1) "Game board", "board", "panel", or "playboard" means that area of the playslip which contains one set of numbered squares to be marked by the player, or, at the player's option by marking the appropriate box on the playboard, selected as a Quick Pick, containing fifty-two (52) squares, numbered one (1) through fifty-two (52). One (1) of twenty-eight (28) numbered MONOPOLY game board properties will be assigned to the player as a Quick Pick with each MONOPOLY MILLIONAIRES' CLUB ticket purchase.

(2) "Top Prize" means the game prize (see Figure: 16 TAC §401.323(d)(3)(A), Prize Level 1) won when a player's wager matches all six (6) numbers, the first five (5) from a field of fifty-two (52) numbers and one (1) from a field of twenty-eight (28) numbered MONOPOLY game board properties.

(3) "Lottery" means a state lottery or lottery of a governmental unit, political subdivision or entity thereof that has agreed to MUSL's MONOPOLY MILLIONAIRES' CLUB Game Rules and is selling the game offered by the MUSL National Premium Game Product Group.

(4) "Lotteries" refers to the Lotteries participating in the MUSL National Premium Game Product Group.

(5) "Millionaires' Club Prize" means a single payment prize (See 16 TAC §401.323(d)(3)(A)) with a value of one million dollars (\$1,000,000). Only when a Top Prize has been won in a MONOPOLY MILLIONAIRES' CLUB drawing, a second drawing will be held to select Millionaires' Club Prize winning tickets.

(6) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by its Member Lotteries, which acts as the central office for the Lotteries in the MUSL National Premium Game Product Group.

(7) "MUSL Board" means the governing body of MUSL which is comprised of the chief executive officer of each MUSL Member Lottery.

(8) "Play" or "wager" means the six (6) numbers, the first five (5) from a field of fifty-two (52) numbers and the last one (1) from a field of twenty-eight (28) numbered MONOPOLY game board properties, that appear on a ticket as a single numbered selection and are to be played by a player in the game.

(9) "Playslip" means an optically readable card issued by the Commission used by players of MONOPOLY MILLIONAIRES' CLUB to select plays and to elect all features. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected. Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid. There shall be four (4) playboards on each playslip.

(10) "MUSL National Premium Game Product Group" or "Product Group" means the group of Lotteries that has joined together to offer the MONOPOLY MILLIONAIRES' CLUB lottery game pursuant to the terms of the Multi-State Lottery Agreement and the Product Group's MONOPOLY MILLIONAIRES' CLUB Game Rules.

(11) "Set Prize" or "Low-Tier prizes" (Prize Levels 2-10) means all other prizes, except the Top Prize and Millionaires' Club Prizes, that are advertised to be paid in a single payment and, except in instances outlined in this rule, are established by the Product Group for each prize level.

(12) "Terminal" means a device authorized by the Commission to function in an interactive mode with the lottery's central gaming system for the purpose of issuing lottery tickets and entering, receiving, and processing lottery transactions, including making purchases, validating tickets, and transmitting reports.

(13) "Winning Numbers" means the six (6) numbers, the first five (5) from a field of fifty-two (52) numbers and the last one (1) from a field of twenty-eight (28) numbers that also represent MONOPOLY game board properties, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

(c) Game Description.

(1) How to Play. MONOPOLY MILLIONAIRES' CLUB is a five (5) out of fifty-two (52) plus one (1) out of twenty-eight (28) lottery draw game, drawn every Friday (or such other day of the week as required by the Product Group's MONOPOLY MILLIONAIRES' CLUB Game Rules), which pays the Top Prize at the election of the player or by a default election made in accordance with this rule, either on an annuitized pari-mutuel basis or a cash lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Only when a Top Prize has been won in a MONOPOLY MILLIONAIRES' CLUB drawing, a second drawing will be held to select Millionaires' Club Prize winning tickets. At the start of each new MONOPOLY MILLIONAIRES' CLUB roll cycle, ten (10) Millionaires' Club Prizes will be available. As determined by the Product Group, more Millionaires' Club Prizes may be added, during the roll cycle, with each drawing until the Top Prize is won and the Millionaires' Club Prizes are drawn. A given play may win in the MONOPOLY MILLIONAIRES' CLUB drawing, the Millionaires' Club Prize drawing (if any), or both drawings. MONOPOLY MILLIONAIRES' CLUB and Millionaires' Club Prize drawings shall use random number generators, and otherwise shall be determined by the Product Group. All Millionaires' Club prizes and MONOPOLY MILLIONAIRES' CLUB Set Prizes (all prizes except the Top Prize) are paid as a single payment. To play MONOPOLY MILLIONAIRES' CLUB a player shall select, or use Quick Pick to choose, five (5) different numbers from one (1) through fifty-two (52); the additional number in the range from one (1) through twenty-eight (28) shall always be a randomly generated Quick Pick number for the second value in the player's selection. The second number may be the same as one of the first five numbers selected by the player. The second number shall be represented on the player's ticket both as a number and as the associated MONOPOLY game board property. Each play shall also have a unique, non-repeating transactional number associated with that play to be used in determining Millionaires' Club Prize winning plays, only in the event the Top Prize is won and a separate Millionaires' Club Prize drawing is held.

(2) Plays and Ticket Purchases. Plays can be purchased for five dollars (U.S. \$5.00) and may be sold only by an on-line licensed sales agent and only at the location listed on the sales agent's license. A ticket sold by a person other than an on-line licensed sales agent is not valid.

(3) Claims. A valid ticket shall be the only proof of a game play, and the submission of a valid winning ticket to the Commission or its authorized sales agent shall be the sole method of claiming a prize or prizes. A playslip has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected.

(4) Cancellations Prohibited. A MONOPOLY MILLIONAIRES' CLUB ticket may not be voided or canceled, even when printed in error. No ticket which can be used to claim a prize shall be returned to the Commission for credit. Tickets accepted by licensed sales agents as returned tickets and which cannot be re-sold shall be deemed owned by the bearer thereof.

(5) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. The placing of plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the play or plays.

(6) Entry of Plays. Plays may only be entered manually using the licensed sales agent terminal touch screen or by means of a playslip provided by the Commission and hand-marked by the player or by such other means approved by the Commission. Licensed sales agents shall not permit the use of facsimiles of playslips, copies of

playslips, or other materials that are inserted into the terminal's playslip reader that are not approved by the Commission. Licensed sales agents shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the Commission.

(d) Prize Pool and Prize Reserve.

(1) Prize Pool. The prize pool for all prize categories shall consist of fifty percent (50.00%) of each drawing period's sales, after the prize pool accounts and prize reserve accounts are funded to the amounts set by the Product Group.

(2) Prize Pool Accounts and Prize Reserve Accounts.

(A) MUSL will deduct an amount up to four percent (4%) of the Texas Lottery's MONOPOLY MILLIONAIRES' CLUB sales from the MONOPOLY MILLIONAIRES' CLUB Top Prize contribution and Millionaires' Club Prize Pool contribution and place in trust in one or more prize pool accounts and prize reserve accounts until the prize pool accounts and the Texas Lottery's share of the prize reserve account(s) reach the amounts designated by the Product Group.

(B) The prize pool accounts established for the MONOPOLY MILLIONAIRES' CLUB game include:

(i) Top Prize and Millionaires' Club Prize Pool (TP&MC Prize Pool), which is used to fund the immediate Top Prize and Millionaires' Club Prizes and shall consist of the Top Prize and Millionaires' Club Prize Pool contributions less amounts to fund the Prize Reserve Account (PRA); and

(ii) Set Prize Pool Account, which holds the temporary balances that may result from having fewer than expected winning plays in the Set Prize categories. The source of the Set Prize Pool Account is the participating Lotteries' weekly prize contributions less actual Set Prize liability.

(C) The Prize Reserve Account is established for the MONOPOLY MILLIONAIRES' CLUB game, which is used to guarantee the payment of the minimum or starting Top Prize and Millionaires' Club Prizes, guarantee the payment of valid, but unanticipated, Top Prize and Millionaires' Club Prize claims that may result from a system error or other reason, and to fund deficiencies in Set Prize payments (subject to the limitations of this rule).

(D) Once the prize pool accounts and the Commission's share of the PRA exceed the designated amounts, the excess shall become part of the TP&MC Prize Pool. The Product Group, with review and comment of the MUSL Finance & Audit Committee, may establish a maximum balance for the prize pool accounts and the PRA.

(E) The Product Group may determine to expend all or a portion of the funds in the PRA and the Set Prize Pool Account: (1) for the purpose of indemnifying the Lotteries in the payment of prizes to be made by the Lotteries, subject to the approval of the MUSL Board; and (2) for the payment of prizes or special prizes in the MONOPOLY MILLIONAIRES' CLUB game, limited to Set Prize Pool and prize reserve contributions from Lotteries participating in the special prize promotion, subject to the review and comment of the MUSL Finance and Audit Committee. The prize reserve shares of a Lottery may be adjusted with refunds to the Lottery from the PRA as may be needed to maintain the approved maximum balance and shares of the Lotteries. As approved by the Product Group, any amount remaining in the prize pool accounts or PRA when the Product Group declares the end of the MONOPOLY MILLIONAIRES' CLUB game shall be returned to all Lotteries participating in the accounts after the end of all applicable claim periods of all Lotteries, carried forward to the replacement PRA or expended in a manner as directed by the individual Lotteries in accordance with jurisdictional requirements.

(3) Expected Prize Payout Percentages, Prize Pool Funding and Fund Transfers.

(A) The Top Prize shall be determined on a pari-mutuel basis. The following table sets forth the probability of winning plays and the probable distribution of winning plays in and among each prize category, based upon the total number of possible combinations in MONOPOLY MILLIONAIRES' CLUB, and prize pool funding by prize category. Except as otherwise provided for in this rule, all other prizes awarded shall be paid as Set Prizes with the following expected prize payout percentages:

Figure: 16 TAC §401.323(d)(3)(A)

(B) The prize money allocated to the Top Prize category shall be divided equally by the number of plays winning the Top Prize.

(C) Prize Pool Account Rollovers and Carry Forwards.

(i) Any monies not paid for Top Prize and Millionaires' Club Prizes in the TP&MC Prize Pool following a drawing shall roll over and be added to the TP&MC Prize Pool for the following drawing.

(ii) The Set Prize Pool for prizes of one hundred thousand dollars (\$100,000.00) or less shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw.

(D) Pari-Mutuel Prize Determinations.

(i) If the total of the Set Prizes awarded in a drawing (prize levels 2-10) exceeds the percentage of the prize pool allocated to the Set Prizes, then the amount needed to fund the Set Prizes awarded shall be drawn from the following sources, in the following order: (1) the amount allocated to the Set Prizes and carried forward from previous draws, if any; (2) an amount from the PRA, if available, not to exceed twenty million dollars (\$20,000,000.00) per drawing.

(ii) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels.

(E) Fund Transfers. On a weekly basis, or as otherwise determined by the Product Group, the Commission will transfer, in trust, an amount as determined by the Product Group to be the Commission's total proportionate share of the MONOPOLY MILLIONAIRES' CLUB license and vendor fees, which include the television game show prizes, and studio audience member travel expenses.

(F) Unclaimed Top Prizes and Millionaires' Club Prizes. All funds to pay a Top Prize or Millionaires' Club Prize that had been collected by the MUSL central office and that went unclaimed shall be returned to the Lotteries in proportion to sales by the Lotteries for the prize(s) in question, after the claiming period set by the Lottery selling the winning ticket expires.

(e) Prize Payment.

(1) Top Prizes.

(A) The Top Prize shall begin at an annuitized amount of Fifteen Million Dollars (\$15,000,000.00) and shall increase following each consecutive drawing in which the Top Prize is not won, except that the annuitized Top Prize amount shall not exceed Twenty-five Million Dollars (\$25,000,000.00) and will remain at this amount for each

subsequent drawing until the Top Prize is won. Top Prizes shall be paid as an annuity or a single lump-sum payment. At the time of ticket purchase, a player may select the option for payment of the cash value or annuitized payments of a share of the Top Prize if the play is a winning play. If no payment option is selected by the player, the default payment option will be the cash value option. Selection of the option for payment of the cash value or annuitized payments of a share of the Top Prize if the play is a winning play is a selection made at the time of purchase and is final and cannot be revoked, withdrawn or otherwise changed.

(B) Shares of the Top Prize shall be determined as provided in paragraph (4) of this subsection. A player(s) who elects a single lump-sum payment (cash value payment) shall be paid his/her share(s) in a single cash payment. If individual shares of the cash held to fund an annuity are less than \$250,000, the Commission, in its sole discretion, may elect to pay the holders of tickets with winning plays their share of the funds of the cash pool to fund the annuity prizes as described in paragraph (4) of this subsection.

(C) All annuitized prizes shall be paid annually in thirty (30) payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity. All annuitized prizes shall be paid annually in thirty (30) graduated payments (increasing each year) at a rate as determined by the Product Group. Prize payments may be rounded down to the nearest one thousand dollars (\$1,000). Annual payments after the initial payment shall be made by the Lottery on the anniversary date or if such date falls on a non-business day, then the first business day following the anniversary date of the selection of the Top winning numbers. Funds for the initial payment of an annuitized prize or the single lump-sum cash prize shall be made available by MUSL for payment by the Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool account sufficient to pay the prize, the transfer of funds for the payment of the full lump-sum cash amount may be delayed pending receipt of funds from all Lotteries. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the State of Texas. If the State of Texas purchases the securities, or holds the prize payment annuity for a Top Prize won in this state, the prize winner will have no recourse against MUSL or any other Lottery for payment of that prize.

(D) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner); otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(2) Millionaires' Club and Set Prize Payments. All Millionaires' Club Prizes and Set Prizes (all prizes except the Top Prize, whether described as "cash" payment prizes or otherwise) for tickets sold by licensed sales agents in Texas and validated according to the Commission's rules shall be paid by the Commission and at the discretion of the Commission by check, warrant, or wire transfer. The Commission may begin paying Millionaires' Club Prizes and Set Prizes after receiving authorization to pay from the MUSL central office.

(3) Prizes Rounded. Annuitized payments of the Top Prize or a share of the Top Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Top Prize win shall be added to the first payment to the verified winner or winners. Set Prizes, which, under this rule, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding

Set Prizes shall be carried forward to the prize pool for the next drawing.

(4) Funding of Guaranteed Prizes. The Product Group may offer guaranteed minimum Top Prize amounts, guaranteed minimum numbers of Millionaires' Club winners, minimum increases in the Top Prize amount between drawings, minimum increases in the number of Millionaires' Club winners between drawings, or make other changes in the allocation of prize money where the Product Group finds that it would be in the best interest of the game. If a minimum Top Prize amount or a minimum increase in the Top Prize between drawings is offered by the Product Group, then shares of the Top Prize shall be determined as follows: If there are multiple Top Prize winning plays during a single drawing, each selecting the annuitized option prize, then a winning play's share of the guaranteed annuitized Top Prize shall be determined by dividing the guaranteed annuitized Top Prize by the number of winning plays. If there are multiple Top Prize winning plays during a single drawing and at least one (1) of the Top Prize claimants has elected the annuitized option prize, then the best bid submitted by the MUSL central office's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Top Prize. If no claimant of the Top Prize during a single drawing has elected the annuitized option prize, then the amount of cash in the Top Prize Pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three (3) best quotes provided by pre-approved qualified brokers submitting quotes. In no case shall quotes be used which are more than two (2) weeks old, and if less than three (3) quotes are submitted, then the MUSL central office shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, as set out in MUSL's MONOPOLY MILLIONAIRES' CLUB Game Rules. Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in subsection (d)(3)(D) of this rule becomes necessary. The annuity factor is determined by the best total securities price obtained through a competitive bid of qualified, pre-approved brokers made after it is determined that the prize is to be paid as an annuity prize. Neither MUSL, the Product Group, nor the Lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to the MUSL central office.

(5) Prize Limited to Highest Prize Won. Except for the Millionaires' Club Prizes, the holder of a winning ticket may win only one (1) prize for that ticket's play and shall be entitled only to the prize won by those numbers in the highest matching prize category. The status of a ticket with a winning play based on a match between the play and the Winning Numbers on that ticket shall have no effect on that ticket's ability to win (if drawn) a Millionaires' Club Prize.

(6) Millionaires' Club Prize. Independent of a ticket's status as an apparent winning ticket due to a match with the Winning Numbers, each ticket in a MONOPOLY MILLIONAIRES' CLUB drawing is eligible to win a Millionaires' Club Prize if (and only if), on that game draw, Millionaires' Club Prizes are awarded. If a ticket is a winning play under both drawings, the prize paid shall be the sum of both the Top Prize or Set Prize (Level 2-10 prizes) and the Millionaires' Club Prize. At the start of each new MONOPOLY MILLIONAIRES' CLUB roll cycle, ten (10) Millionaires' Club Prizes will be available. As determined by the Product Group, more Millionaires' Club Prizes may be added, during the roll cycle, with each drawing until the Top Prize is won and the Millionaires' Club Prizes are drawn.

(7) Prize Claim Period. Prize claims shall be submitted no later than 180 days after the draw date.



(8) Prize Winners. Subject to state law and rules of the Commission, the name and city of the winner of a Top Prize or Millionaires' Club Prize will be disclosed in a press conference or in a press release, and the prize winner may be requested to participate in a press conference. For legal entities, the name of a natural person who is a principal of the legal entity must be provided.

(f) Ticket Claim and Validation.

(1) Prize Claims. Prize claim procedures shall be governed by the rules of the Commission as set out in §401.304 of this chapter and any internal procedures used by the Commission. Neither MUSL, the Product Group, nor the other participating Lotteries shall be responsible for prizes that are not claimed following the proper procedures as determined by the Commission.

(2) Signature. Until such time as a signature is placed upon a ticket in the area designated for signature, a ticket shall be owned by the bearer of the ticket.

(3) Multiple Claimants. The issue of multiple claimants shall be handled in accordance with Texas Government Code Chapter 466 and §401.304 of this chapter.

(4) Stolen Tickets. Neither MUSL, the Product Group, nor any of the participating Lotteries shall be responsible for lost or stolen tickets.

(5) Ticket Validation. To be a valid ticket and eligible to receive a prize, a ticket shall satisfy all the requirements established by the Commission for validation of winning tickets sold through the Texas Lottery's gaming system and any other validation requirements adopted by the Lotteries, the Product Group, and the MUSL Board. Neither MUSL, the Product Group, nor any of the participating Lotteries shall be responsible for paying prizes for tickets which are altered in any manner.

(g) Ineligible Players.

(1) A ticket or share for the MONOPOLY MILLIONAIRES' CLUB Game shall not be purchased by, and a prize won by any such ticket or share shall not be paid to:

(A) any MUSL employee, officer, or Product Group Lottery Director;

(B) any contractor or consultant under agreement with MUSL to review MUSL audit and security procedures;

(C) any employee of an independent accounting firm under contract with MUSL to observe drawings or site operations who is actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) Any officer, employee or director of Hasbro, Inc.,  
or

(E) an immediate family member (parent, stepparent, child, stepchild, spouse or sibling) of an individual described in subparagraphs (A), (B), (C) or (D) of this paragraph and residing in the same household.

(2) Those persons designated by a Lottery as ineligible to play its games also shall be ineligible to play the MONOPOLY MILLIONAIRES' CLUB game in any Lottery jurisdiction.

(h) Applicable Law. In purchasing a ticket in Texas, the purchaser agrees to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the Commission.

(i) MONOPOLY MILLIONAIRES' CLUB Television Game Show.

(1) Television Game Show. The Product Group may decide to add a television game show to the MONOPOLY MILLIONAIRES' CLUB game. The MONOPOLY MILLIONAIRES' CLUB television game show (TV Show) will be produced at times and places approved by the Product Group for broadcast at times approved by the Product Group.

(2) Basic TV Show Design; Alterations. The basic design of the TV Show shall be as described in this subsection, except that any alteration of the basic design of the TV Show may be approved by the Product Group. Contests played on the TV Show shall be as approved by the Product Group.

(3) Eligibility. Unless otherwise indicated by the Commission, a Texas Lottery player may become eligible for TV Show studio audience member selection by registering a MONOPOLY MILLIONAIRES' CLUB ticket or tickets with one or more qualifying MONOPOLY game board properties according to the requirements of this game rule. Members of the studio audience shall be eligible to be selected to participate in MONOPOLY-themed contests on the TV Show. Guests of players who are not proxied by the player to appear as an on-stage participant in the place of the player are not eligible to be selected as an on-stage game participant.

(4) How to Register. To register a MONOPOLY MILLIONAIRES' CLUB ticket for participation in the selection of studio audience members, a Texas Lottery player must visit the Commission's LuckZone website, where the player will be asked to sign into his/her existing LuckZone account or open a new account and enter the webcode printed on the MONOPOLY MILLIONAIRES' CLUB ticket. The MONOPOLY game board property on the ticket, together with a randomly generated additional bonus MONOPOLY game board property assigned when the ticket is registered at the LuckZone website, will be put in the player's account. As shown in the following table, for each complete MONOPOLY property group, the player will be awarded a number of entries in a drawing from which studio audience members will be selected.  
Figure: 16 TAC §401.323(i)(4)

(5) Selection of Studio Audience Members. The Commission (or its authorized designee) shall, from time to time as specified by the Product Group, conduct a promotional drawing from among those MONOPOLY MILLIONAIRES' CLUB registered Texas Lottery LuckZone account holders who have accumulated enough MONOPOLY properties to participate in the drawing. For each drawing, the Commission shall select a minimum of three (3) studio audience participants, each of whom shall be awarded: i) transportation, meals, and lodging expenses for himself or herself and a guest to travel to and return from the TV Show; and ii) the opportunity to be chosen as an on-stage participant on the TV Show and play MONOPOLY-themed contests for prizes.

(6) No transfers; No cash option; Exceptions. A Texas Lottery player selected to participate as a studio audience member for the TV Show shall not have the right to transfer such selection to another person, except that the Commission, in its sole discretion, may permit or require the player to appoint another person to participate as a studio audience member (a proxy), subject to player eligibility requirements set by the Commission. If the player selects, or the Commission requires, a proxy to participate as a studio audience member in his/her place, the transportation, meals, and lodging expenses, together with any prize(s) awarded as a result of participation in the studio audience or in a contest on the TV Show shall be deemed to be received by the player initially selected to participate, not the proxy. Nothing in this rule requires the Commission to permit studio audience members to appoint a replacement to attend the TV Show taping. A player selected to participate as a studio audience member for the TV Show shall not

have the right to decline the payment of expenses for transportation, meals, and lodging in exchange for a sum of money equivalent to the value of such expenses. The Commission, in its sole discretion, may select another player to attend the TV show taping should the player initially selected to participate in the studio audience decline the invitation or be determined to be ineligible to claim such prize under the State Lottery Act, this Chapter, or other Texas law. Nothing in this rule requires the Commission to offer a cash option in lieu of the opportunity to attend the TV Show.

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 August 12, 2014.

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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5012



## CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

### 16 TAC §§402.321 - 402.323, 402.325

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.321 (Card-Minding Systems--Definitions), §402.322 (Card-Minding Systems--Site System Standards), §402.323 (Card-Minding Systems--Device Standards), and §402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements), with changes to the proposed text as published in the February 28, 2014, issue of the *Texas Register* (38 TexReg 1325). On January 8, 2014, the Commission received a petition for the adoption of amendments to these rules from K&B Sales, Inc. and the Veterans of Foreign Wars - Department of Texas. The primary purpose of the requested amendments is to allow, but not require, licensed authorized organizations to offer bingo patrons the opportunity to set up individual customer accounts at the bingo premises that could then be used by the patrons to track the deposit of funds into the account and to purchase bingo products from those funds.

In response to a comment received from a member of the public, the Commission has added §402.323(m)(5) to the proposed amendments. This new paragraph expressly prohibits video confirmation of pull-tab tickets on card-minding devices.

Public comment hearings were held on Wednesday, March 19, 2014 at 10:00 a.m. and Monday, August 4, 2014 at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Several members of the public provided comments at the March 19th hearing and all were in favor of the proposed amendments: a representative of Texas Charity Advocates, a representative of K&B Sales, Inc. and the Veterans of Foreign Wars, a representative of River City Bingo and Big Star Bingo Charities, and a representative of the Bingo Interest Group. Several members of the public also provided comments at the August 4th hearing: representatives of K&B Sales, Inc., River City Bingo Charities, Veterans of For-

eign Wars, and Texas Charity Advocates, all in favor of the proposed amendments; and a representative of the Texas Baptist Christian Life Commission, against the proposed amendments. The Commission also received written comments both for and against the proposed amendments, including comments from the following: a representative of the Texas Baptist Christian Life Commission, against the proposed amendments; a representative of K&B Sales Inc. and the Veterans of Foreign Wars, in favor of the amendments as proposed; a representative of The Arc of the Capital Area, Inc., Family Eldercare, Inc., North Austin Foundation, Project Normalization, and Texas Hillel Foundation, in support of the amendments as proposed; and representatives of High Plains Unit Trust, St. Joseph's Catholic School & Church, Charity Bingo, Brazos Valley Council on Alcohol and Substance Abuse, Savannah Boxing Association, Emergency Ministries, The Reunion Institute, Boys Club, Bingo Barn, and VFW Post 8905, all in support of the amendments as proposed.

The Texas Baptist Christian Life Commission requests "statements of responses" pursuant to §2001.030 of the Texas Government Code, which requires a state agency to issue a concise statement of the principal reasons for and against adoption of a rule proposal, and the reasons for overruling the considerations urged against adoption. The principal reason for adoption of the amendments to §§402.321, 402.322, 402.323, and 402.325 is that the petitioners anticipate the amendments will provide licensed authorized organizations the opportunity to utilize new technology to attract bingo customers and increase sales, thus increasing revenue to various charitable purposes. The Commission has received comments against the adoption of the rule amendments. The comments are addressed in detail below, but principal arguments against adoption are that: (1) the rule amendments will authorize the playing of electronic pull-tab tickets on card-minding devices; (2) the Commission lacks the authority to adopt the proposed amendments; (3) the proposed amendments will expand gambling; and (4) a violation of §467.108 of the Texas Government Code occurred during the rulemaking process. The Commission has overruled these considerations because: (1) the rule amendments will not authorize the playing of electronic pull-tab tickets on card-minding devices; (2) the Commission has the authority to adopt the proposed amendments under the Bingo Enabling Act and Chapter 467 of the Texas Government Code, and previous legislation does not indicate any clear legislative intent against the substance of the proposed amendments; (3) the proposed amendments do not alter how bingo is currently played and do not authorize an expansion of gambling; and (4) it is not within the Commission's authority to determine whether a violation of §467.108 occurred.

COMMENT SUMMARY: Several commenters express general support for the proposed amendments to §§402.321, 402.322, 402.323, and 402.325. One commenter notes that the proposed amendments should generate an increase in net proceeds for charities conducting bingo. Another commenter notes that the proposed amendments will allow charitable organizations to better use technology already authorized for use in bingo, but would not authorize any new gaming, expand gambling, or exceed the Commission's rulemaking authority.

COMMISSION RESPONSE: No changes will be made to the proposed amendments as a result of these comments.

COMMENT SUMMARY: One commenter requests clarification of the intent behind the requirement in proposed §402.325(p) that unclaimed balances in a customer account that are retained

by a licensed authorized organization be deposited into the organization's bingo account and used only for the charitable purposes of the organization.

COMMISSION RESPONSE: Section 2001.451 of the Occupations Code requires a licensed authorized organization to establish a checking account where funds derived from the conduct of bingo will be deposited. That checking account is known as the "bingo account." Pursuant to §2001.453 of the Occupations Code, funds from a bingo account may only be withdrawn for the payment of reasonable or necessary bona fide expenses and for the organization's charitable purposes. Proposed §402.325(p) will require licensed authorized organizations to deposit any unclaimed balances from a customer account into the organization's bingo account. However, under proposed §402.325(p), the organization must dedicate the unclaimed balances in the bingo account to the organization's charitable purpose(s); the unclaimed balances may not be used to pay reasonable or necessary bona fide expenses.

COMMENT SUMMARY: One commenter requests clarification of the intent behind proposed §402.325(p)(2), which allows funds in a bingo account to be used over multiple consecutive occasions within one 24-hour period.

COMMISSION RESPONSE: Under proposed §402.325(p), funds in a customer account must be used or withdrawn by the end of the occasion at which the funds were deposited into the account. If a customer fails to use or withdraw funds from their account prior to the end of that occasion, the funds will be retained by the licensed authorized organization. However, under proposed §402.325(p)(2), if the licensed authorized organization conducts multiple consecutive occasions within one 24-hour period, funds placed in a customer account during one of the consecutive occasions may be used throughout all the consecutive occasions in that 24-hour period. In that scenario, a customer must use or withdraw funds from their account prior to the end of the last consecutive occasion. Otherwise, the licensed authorized organization will retain the funds.

COMMENT SUMMARY: Upon submission of the petition to adopt amendments to §§402.321, 402.322, 402.323, and 402.325, the petitioners provided the Commission with an economic impact analysis of the requested amendments completed by Sanders Consulting Services. One commenter requests that this analysis be incorporated into the rulemaking record.

COMMISSION RESPONSE: The Commission will include the analysis in the official rulemaking file. However, the Commission cannot independently verify the accuracy of the referenced economic impact analysis. Therefore, the analysis should not be considered to be the Commission's opinion on the economic impact of the proposed amendments.

COMMENT SUMMARY: One commenter notes that federally recognized Indian tribes conducting Class II gaming under the federal Indian Gaming Regulatory Act (IGRA) are, according to the National Indian Gaming Commission (NIGC), permitted to operate certain electronic pull-tab bingo machines. The commenter suggests that the adoption of the proposed amendments to §§402.321, 402.322, 402.323, and 402.325 would authorize the playing of similar electronic pull-tab bingo games on card-minding devices.

COMMISSION RESPONSE: The proposed amendments will not authorize the playing of electronic pull-tab bingo on card-minding devices. Under IGRA, Indian tribes are permitted to use "electronic, computer, or other technologic aids" in connection

with the conduct of bingo. See 25 U.S.C. §2703(7)(A)(i) (defining Class II gaming). The NIGC has adopted a broad definition of "electronic, computer, or other technologic aids." See 25 C.F.R. §502.7 (defining "electronic, computer, or other technologic aid"). Using the standard adopted by the NIGC, several Indian tribes have employed electronic bingo machines that are virtually indistinguishable from traditional slot machines. Players utilizing such electronic machines actually play bingo on the machine. The Commission recognizes that while these types of electronic bingo machines may be authorized for Indian tribes under federal law, they are not authorized for charitable bingo under state law. See Tex. Att'y Gen. Op. No. GA-541 (2007). Under the proposed amendments to §§402.321, 402.322, 402.323, and 402.325, however, players will not be playing pull-tab bingo on card-minding devices (or any other electronic devices). The proposed amendments authorize the use of customer accounts that may be accessed on card-minding devices. The proposed amendments make clear, however, that card-minding devices may not be used to play or purchase pull-tab bingo tickets. See 16 TAC §402.323(m)(4) (as proposed). The only type of bingo game authorized for play on a card-minding device is regular bingo (not pull-tab bingo), and the proposed amendments do not alter this restriction. Therefore, the Commission does not believe the proposed amendments authorize expanded gambling as contemplated by the commenter. The Commission declines to modify the proposed amendments in response to this comment.

COMMENT SUMMARY: One commenter states that the proposed amendments to §§402.321, 402.322, 402.323, and 402.325 would authorize the same electronic pull-tab bingo and expanded card-minding functionality that was proposed, debated, and ultimately rejected by the Legislature. Therefore, according to the commenter, it was the Legislature's intent that the customer accounts that would be authorized under the proposed amendments not be permitted in this state.

COMMISSION RESPONSE: None of the rejected pieces of legislation that the commenter refers to would have authorized customer accounts in the limited manner that the proposed amendments would do. In addition, please see *El Chico Corp. v. Poole*, 732 S.W.2d 306, 314 (Tex. 1987) (generally discussing rejected legislation).

For example, several pieces of legislation cited by the commenter would have authorized an electronic form of pull-tab bingo that will not be authorized under the proposed amendments to §§402.321, 402.322, 402.323, and 402.325. Senate Bill 1422 and House Bill 2792 of the 78th Regular Legislative Session, House Bill 55 of the first called session of the 78th Legislature, House Bill 3 (senate floor amendment #24) of the 79th Regular Legislative Session, House Bill 3 (senate floor amendment #27) of the first called session of the 79th Legislature, House Bill 2206 of the 80th Regular Legislative Session, and Senate Bill 1110 of the 80th Regular Legislative Session all involved the authorization of electronic pull-tab bingo using electronic tickets. Under that legislation, pull-tab bingo could be played exclusively on an electronic device. As noted in the Commission's response to the previous comment, the proposed amendments would not authorize electronic pull-tab bingo tickets or the play of pull-tab tickets on an electronic device. The proposed amendments would merely permit players to access their customer account using a card-minding device. Similarly, House Bill 2728 of the 82nd Regular Legislative Session originally included language that would permit players to access their customer accounts through a card-minding device.

That language was ultimately removed from the bill before it passed into law. However, the removed language would have expanded the functionality of card-minding devices beyond what the proposed amendments to §§402.321, 402.322, 402.323, and 402.325 will do. For example, the removed language would have allowed bingo prizes to be directly credited to the winning player's account. The proposed amendments expressly prohibit bingo prizes from being directly credited to a player's account. See 16 TAC §402.323(m)(3) (as proposed). The proposed amendments also prohibit card-minding devices from tracking and storing bingo prizes and replaying any winnings. See *id.* §402.323(m)(1) - (2) (as proposed). Furthermore, the Statement of Legislative Intent from HB 2728 indicates that the bill was intended to "not allow a new type of gaming device which has the look and feel of a slot machine." H.J. of Tex., 78th Leg., R.S., 3699 (2011). As previously explained, the proposed amendments to §§402.321, 402.322, 402.323, and 402.325 do not authorize a gaming device that is similar to a slot machine. Finally, none of the remaining legislation referenced by the commenter involved customer accounts as contemplated by the proposed amendments: House Bill 2086, House Bill 3371, and Senate Bill 22 of the 75th Regular Legislative Session; Senate Bill 575 of the 76th Regular Legislative Session; House Bill 1795, House Bill 3324 (commenter's reference to this bill appears to be a mistake as the bill does not involve bingo in any way), Senate Bill 1720, and Senate Bill 1504 of the 77th Regular Legislative Session; House Bill 2442, House Bill 2519, Senate Bill 270, and Senate Bill 1736 of the 78th Regular Legislative Session. Therefore, based on the analysis above, the Commission does not believe that any of the legislation referenced above evidences legislative intent against the type of customer account authorized under the proposed amendments. The Commission declines to modify the proposed amendments in response to this comment.

COMMENT SUMMARY: One commenter requests that language be included in the proposed amendments to prohibit video confirmation of pull-tab tickets on card-minding devices.

COMMISSION RESPONSE: The Commission accepts this comment. New §402.323(m)(5) has been added to expressly prohibit video confirmation of pull-tab tickets on card-minding devices.

COMMENT SUMMARY: One commenter contends that the Commission lacks the statutory authority to adopt the proposed amendments. The commenter also requests that the Commission seek an opinion from the Attorney General regarding the authority to adopt the proposed amendments.

COMMISSION RESPONSE: The Commission declines to modify the proposed amendments in response to this comment. The Legislature has given the Commission broad rulemaking authority to enforce and administer the Bingo Enabling Act in both Tex. Occ. Code §2001.054 and Tex. Gov't Code §467.102. See *Pruett v. Harris County Bail Bond Bd.*, 249 S.W.3d 447, 453 (Tex. 2008) ("When a statute expressly authorizes an agency to regulate an industry, it implies the authority to promulgate rules and regulations necessary to accomplish that purpose."). The Commission believes the proposed amendments are within its authority to adopt and that an Attorney General's opinion is not necessary in this instance.

COMMENT SUMMARY: One commenter opposes the proposed amendments because she believes they will result in expanded gambling.

COMMISSION RESPONSE: The proposed amendments do not expand gambling in Texas, nor do they alter the way bingo is played. The proposed amendments merely authorize bingo conductors to offer another method for patrons to purchase bingo products. The proposed amendments do not expand on the type of gambling authorized by the Texas Constitution and the Bingo Enabling Act. The Commission declines to modify the proposed amendments in response to this comment.

COMMENT SUMMARY: One commenter requests that the Commission withdraw the rule proposal because, according to the commenter, a violation of §467.108 of the Texas Government Code occurred during this rulemaking process.

COMMISSION RESPONSE: The Commission declines this request. Section 467.108 of the Texas Government Code places limits on the scope of representation a former Commission member, executive director, or director may provide in representing interests before the Commission. Whether a violation of §467.108 has occurred is a criminal matter that is not within the Commission's authority to determine.

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

The adopted amendments implement Chapter 2001 of the Texas Occupations Code.

*§402.321. Card-Minding Systems--Definitions.*

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

(1) Account Number--The unique identification number, if any, assigned by a card-minding system's point of sale to a transaction during a purchase and used by a customer to log on to a card-minding device in order to play bingo.

(2) Card-Minding System--An electronic or computerized device and related hardware and software, that is interfaced with, or connected to, equipment used to conduct a game of bingo. A card-minding system consists of the following two parts:

(A) Card-Minding Device--A device used by a player to monitor bingo cards played at a licensed authorized organization's bingo occasion and which:

(i) provides a means for the player to input or monitor called bingo numbers;

(ii) compares the numbers entered or received against the numbers on the bingo cards stored in the memory of the device or loaded or otherwise enabled for play on the device; and

(iii) identifies any winning bingo pattern(s) and prize levels.

(B) Site System--Computer hardware, software, and peripheral equipment, that is located at the bingo premises, is controlled by the licensed authorized organization conducting bingo, and interfaces with, connects with, controls, or defines the operational parameters of card-minding devices. Site Systems must include, but are not limited to, the following components: point of sale station, a caller station verifier, printers, remote access capability, proprietary executable software, report generation software and an accounting system and database.

(3) Card number range--The range of unique numbers that are on the card faces that are actually sold to a given player for use in a single card-minding device. (Example: Device #1 is given card number range 2056-2080, and Device #2 is given card number range 2081-2105.)

(4) Checksum--A value of fixed-size computed from a block of digital data for the purpose of detecting changes or modifications. Also referred to as a digital signature or hash sum.

(5) Connected--Communication between the card-minding device and the site system by wired or wireless means during an active bingo occasion.

(6) Customer Account--An account established by a customer and tracked with the use of a unique personal identification or account number or a customer card issued by a licensed authorized organization and used at a point of sale station or on a card-minding system. The customer may access their own Customer Account to track:

- (A) the deposit of funds; and
- (B) the purchase of bingo cards for play on a card-minding device.

(7) Device ID number--The unique identification number assigned by a manufacturer to a specific card-minding device.

(8) Device played--A card-minding device utilized within a bingo occasion which had cards enabled or loaded and played.

(9) End of occasion log--Information stored in the site system database at the end of each bingo occasion containing pertinent sales, voids, game, and system accounting information to include the following:

- (A) licensed authorized organization's name;
- (B) licensed authorized organization's license number;
- (C) bingo occasion site (location);
- (D) sequential listings of transactions or receipt numbers, including voided transactions;
- (E) date and time of the bingo occasion and occasion number, if applicable;
- (F) total quantity of card-minding devices loaded;
- (G) the device ID number of each card-minding device loaded;
- (H) total dollar value of sales of card-minding devices;
- (I) total quantity of voided transactions to include the dollar amount;
- (J) total quantity of reloaded bingo cards;
- (K) card numbers or card number range of card faces used with each card-minding device;
- (L) total dollar value of disposable cards sold;
- (M) total dollar value of pull-tab bingo sold;
- (N) total dollar value of regular bingo prizes awarded;
- (O) total dollar value of pull-tab bingo prizes awarded;
- (P) total dollar value of prize fees collected;
- (Q) listing of the balls called, in the order called, for each game; and

(R) listing of all card face numbers verified for each game, both the non-winning and the winning card face numbers.

(10) Independent testing facility--A laboratory approved by the Commission that is demonstrably competent and qualified to test card-minding systems scientifically and evaluate them for compliance with statutes and regulations. An independent testing laboratory shall maintain the current applicable standards of the International Organization of Standardization as an accredited laboratory in the field of information technology testing. An independent testing laboratory shall not be owned or controlled by a licensed authorized organization, the state, or any manufacturer, distributor or operator of card-minding systems.

(11) Mobile Point-of-Sale Station--Mobile device that allows a licensed authorized organization to conduct customer sales transactions anywhere within the bingo premises and is a component of the site system.

(12) Model number--A number designated by the manufacturer that indicates the unique structural design of a card-minding device or site system.

(13) Occasion Report--A report generated by the site system at the end of each bingo occasion containing pertinent sales, voids, game and system accounting to include the following information:

- (A) licensed authorized organization's name;
  - (B) licensed authorized organization's license number;
  - (C) bingo occasion site (location);
  - (D) total dollar value of sales of card-minding devices;
  - (E) total dollar value of voided transactions;
  - (F) total dollar value of sales of disposable cards;
  - (G) total dollar value of sales of pull-tab bingo;
  - (H) total dollar value of regular bingo prizes awarded;
  - (I) total dollar value of pull-tab bingo prizes awarded;
- and
- (J) total dollar value of prize fees collected.

(14) Occasion Summary Report--A report generated by the site system for any specified period which contains the following information:

- (A) licensed authorized organization's name;
  - (B) licensed authorized organization's taxpayer number;
  - (C) bingo occasion site (location);
  - (D) total number of bingo occasions;
  - (E) total dollar value of sales of card-minding devices;
  - (F) total dollar value of voided transactions;
  - (G) total dollar value of sales of disposable cards;
  - (H) total dollar value of sales of pull-tab bingo;
  - (I) total dollar value of regular bingo prizes awarded;
  - (J) total dollar value of pull-tab bingo prizes awarded;
- and
- (K) total dollar value of prize fees collected.

(15) Package number--A number identifying the complete package of bingo cards purchased for a card-minding device.

(16) Proprietary software--Custom computer software developed by a licensed manufacturer that is the primary component of a card-minding system and is required for a card-minding device to be used in a game of bingo.

(17) Secondary component--Additional software or hardware components provided by the manufacturer, that are part of, or are connected to, a card-minding system and that do not affect the conduct of the bingo game. Secondary components may include computer screen backgrounds, battery charge-up software routines, printers, printer software drivers, and charging racks.

(18) Software modifications--Alterations to proprietary software.

(19) Transaction log--A site system report containing a record of transaction information in detail.

(20) Version number--A unique number designated by the manufacturer to signify a specific version of software used on or by the card-minding system.

§402.322. *Card-Minding Systems--Site System Standards.*

(a) The site system must be designed so that the Commission may remotely verify the operation, compliance and internal accounting systems of the site system at any time. The manufacturer shall provide to the Commission all current protocols, usernames, passwords, and any other required information needed to access the system. Any and all reports maintained or available for generation by the card-minding system shall be capable of being downloaded or otherwise accessed via the remote connection.

(b) The site system's internal accounting system must be capable of recording the licensed authorized organization's sale of card-minding devices, disposable bingo cards, pull-tab bingo tickets, regular bingo prizes awarded, pull-tab bingo prizes awarded and prize fee collected.

(c) The site system must be able to verify winning cards and print the cards for posting. For verification purposes, the site system must be capable of storing and printing an ordered list of all balls called for each regular bingo and pull-tab bingo event game.

(d) The site system must be capable of storing:

(1) all transactions affecting a card-minding device;

(2) the device ID number for each transaction affecting the card-minding device; and

(3) the date, time, quantity of electronic bingo cards affected, price per card or package, package number, and transaction number for each of the following transactions:

(A) loading of cards; and

(B) voiding of cards.

(e) The site system may allow the same electronic bingo cards originally sold and loaded on a card-minding device (device #3, for example) to be reloaded on the same device, provided the transaction is recorded as a reload.

(f) The site system shall not allow the exact duplication of cards on two different card-minding devices. However, the site system may allow electronic bingo cards originally sold on one card-minding device (device #4, for example) to be reloaded on a different card-minding device (such as device #10), provided that the original device (#4) was removed from play and the site system recorded the transaction as a reload.

(g) The site system must not engage in any type of sale, void, or reload transaction for a card-minding device unless a functioning card-minding device or a programmable memory device that inserts into a card-minding device is connected with the site system.

(h) For voided transactions, the site system shall ensure all electronic bingo cards are erased or deactivated.

(i) Upon completion of each transaction, the site system must not allow any transactional information including date, time, quantity of electronic bingo cards, price per card or package, package number, or other source information to be changed within the accounting system or database.

(j) The site system must identify duplicate device ID numbers.

(k) The site system must recognize the device ID number and store that number on the transaction log for each and every transaction that directly affects that card-minding device.

(l) The site system must have a database backup and recovery system to prevent loss of transactional information in the event of power failures or any disruptive event.

(m) The site system must not allow a player or operator to select specific cards from a perm of electronic bingo cards to be sold or played.

(n) The site system must record a sequential transaction number or audit tracking number for every transaction. The site system must not allow this number to be changed or reset manually.

(o) The site system must be capable of printing a receipt and recording for each sale, void or reload of an electronic or paper card face product that includes, at a minimum, the following information:

(1) licensed authorized organization's name;

(2) licensed authorized organization's taxpayer number;

(3) bingo occasion location name;

(4) date and time of the transaction, in DD/MM/YYYY HH:MM:SS; format;

(5) sequential transaction or audit tracking number;

(6) the dollar value of the transaction and quantity of associated products;

(7) a notation to distinguish from which point of sale terminal the receipt was produced when more than one sales terminal is used;

(8) the total dollar value of the transaction; and

(9) transactions including a card-minding device must include the following information:

(A) device ID number (cannot be manually entered) or account number; and

(B) range of electronic bingo cards sold.

(p) The site system must be capable of storing and printing:

(1) a transaction log; and

(2) end of occasion log for each bingo occasion.

(q) The site system must be capable of storing and printing an Occasion Report and Occasion Summary Report on demand.

(r) The site system must not allow a card-minding device to enable and play more than 66 card faces for any one regular bingo game.

(s) The site system must be capable of maintaining all required information for the end of occasion log and the occasion summary report for a period of 48 months.

(t) The site system must not erase or overwrite any of the required bingo occasion information until both detail and summary information is transferred to a secondary storage medium.

(u) All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section.

(v) The site system may, but is not required to, be designed to incorporate the use of a customer account. However, if the site system incorporates the use of a customer account, the site system must include the following requirements:

(1) All communications regarding transactions between the bingo card-minding device and the site system must be secured by use of a unique personal identification number (PIN) established by the player;

(2) All transactions may only be processed after the site system confirms the identity of the player;

(3) Be capable of recording each transaction made by a player from their customer account and include the transaction number, transaction dollar amount, time and date, quantity and type of product purchased, and customer's account number;

(4) Not be used to track and credit a customer's account with bingo prizes won;

(5) Additional funds may be added to the customer's account only at a Point-of-Sale Station;

(6) Capable to generate financial reports for customer account activity to include:

(A) customer account number;

(B) initial amount of funds placed in the account;

(C) each transaction including quantity and type of bingo product(s) purchased, dollar amount, time and date, any ending balance, bingo worker login information;

(D) if balance was refunded at end of occasion, or retained by the organization as other income; and

(7) Be capable of and shall provide a receipt for each customer transaction that contains the following disclaimer: "Any funds remaining in your customer account that you do not claim by the end of the occasion will be kept by the licensed authorized organization. Please allow enough time before the end of the occasion to claim your funds on your account."

*§402.323. Card-Minding Systems--Device Standards.*

(a) The card-minding device must have a unique, permanent identification number, or have a unique identification number secured by password or code and accessible only by use of such password or code.

(b) The identification number must be coded into the software of the card-minding device.

(c) The card-minding device must automatically transmit its identification number to the site system or be known by the site system, to be recorded on the transaction log, each time the device is involved in a transaction with the site system.

(d) The card-minding device must be designed in such a manner to allow for one or more of the following daubing features:

(1) Manual ball call: This requires the player to identify uniquely the ball call that has been made. This could be through a number of methods, for example: the selection of the number on a grid containing all 75 numbers; the selection of the letter from BINGO, then the number from a list of 15 numbers; or the entry through a keypad of the digits comprising the number. However, it requires the player to enter the numbers as they are called and therefore allows the player to enter a number in error. This method of daubing must enable the player to correct numbers entered in error.

(2) Ball call confirm: This method requires the broadcast of the ball call information to the card-minding device. When the ball call is received by the card-minding device, the player must perform an action to confirm or enter the ball call. This is typically through the pressing of a key or the touching of the screen. This daub style requires the player to perform an action for each and every ball call that is made. If the player waits, and a number of ball calls are made without the player performing any action, the player must then touch the screen (or press enter) once for each ball called. The ball calls must be processed in the order they were drawn.

(3) Semi-auto daub: This method requires the broadcast of the ball call information to the card-minding device. This method operates in the same manner as ball call confirm, except that, if the player allows multiple balls to be called without interacting with the card-minding device, a single action will daub all outstanding ball calls. The ball call that was most recently made by the caller is processed last and the bingo cards are scored with this number being the "last number" for any last number rule games.

(4) Auto Daub: This method requires the broadcast of the ball call information to the card-minding device. As each ball call is received by the card-minding device, the card-minding device behaves as though the player performed the ball call confirm action. That is to say, the card-minding device will act automatically as each ball call is announced.

(e) The card-minding device must recognize bingo numbers called and after having the numbers entered through one of the methods in subsection (d) of this section, must electronically daub the number on all activated bingo cards enabled or loaded on the card-minding device containing those numbers in the winning pattern.

(f) If a card-minding device requires the player to manually enter ball call numbers, the card-minding device must allow the player to cancel or correct any numbers entered in error.

(g) The card-minding device must not allow a player to modify cards that are loaded and enabled for play.

(h) The card-minding device must recognize and display all winning bingo patterns achieved.

(i) The card-minding device must be programmed to only allow bingo cards purchased and loaded and enabled for play during a bingo occasion, to be in play during that occasion. Therefore, the card-minding system shall provide a means to erase, disable, or render unplayable the bingo cards loaded and enabled on each card-minding device played in a bingo occasion, prior to playing the same device in the next bingo occasion. Suggested means are at least one of the following:

(1) on deactivation of the current bingo occasion;

(2) by inserting the device into a charger;

(3) by a timer within the device;

- (4) on activation of the next bingo occasion;
- (5) by automatically erasing all bingo cards and/or bingo card face numbers stored in the device after the last bingo game of the occasion; or
- (6) any other suitable means to ensure game integrity.

(j) All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section.

(k) A card-minding device utilizing a customer account may not permit customers to purchase any bingo equipment other than electronic bingo cards for play on the card-minding device.

(l) A card-minding device used with customer accounts must display the account balance at all times.

(m) A card-minding device shall not:

- (1) track and store any winnings from authorized bingo games;
- (2) replay any winnings;
- (3) be used to credit the player's winnings;
- (4) be used to purchase or play pull-tab bingo tickets; and
- (5) be used for video confirmation of pull-tab bingo tickets.

(n) The card-minding device may not be used:

- (1) to generate or determine the random letters, numbers, or other symbols used in playing the bingo card played with the device's assistance;
- (2) as a receptacle for the deposit of tokens or money in payment for playing the bingo card played with the device's assistance; or
- (3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or a thing of value for the bingo card played with the device's assistance.

*§402.325. Card-Minding Systems--Licensed Authorized Organizations Requirements.*

(a) The licensed authorized organization must ensure the site system is accessible to the Commission via remote connection at all times.

(b) The licensed authorized organization must ensure that the receipts for its bingo occasion display the correct licensed authorized organization name, location name, time, and date.

(c) The licensed authorized organization must ensure that the occasion report displays the correct licensed authorized organization name, location name, date of the bingo occasion, and all other required information contained in §402.321(13) of this chapter.

(d) The licensed authorized organization must treat void transactions resulting in a cash refund in the following manner:

- (1) The player must present the original receipt which was issued at the time of the purchase of the card-minding device before the purchase can be voided;
- (2) The word "void" shall be clearly printed on the receipt issued once the void has occurred;
- (3) The player must write his or her name, address, telephone number, signature, and amount of refund on the back of the void receipt before a partial or full refund may be issued; and

(4) All voided receipts must be attached to the bingo occasion report printed at the end of each bingo occasion and maintained with the records.

(e) If presales are made and the associated cards are not purchased, loaded, and enabled for play on a card-minding device, then those presales must be voided by the start of the second game of the occasion.

(f) Each licensed authorized organization must record all sales of electronic bingo cards and card-minding devices on the card-minding system point of sale station. Disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets and all bingo prizes awarded, including both regular bingo and pull-tab bingo, may be recorded on the card-minding point of sale station. However, if a licensed authorized organization utilizes a customer account on a card-minding system, that organization must record all sales of disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets and all bingo prizes awarded, including both regular bingo and pull-tab bingo, on the card-minding system point of sale. Disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets sales and bingo prizes awarded may be recorded at the end of the occasion.

(g) Each licensed authorized organization purchasing, leasing, or otherwise utilizing a card-minding system must maintain a log or other records showing the following:

- (1) the date the card-minding system was installed or removed; and
- (2) the name and license number of the distributor from which the card-minding system was purchased, leased or otherwise obtained.

(h) If multiple licensed authorized organizations hold an interest in a card-minding system, a single record identifying each licensed authorized organization should be retained on the premises where the card-minding system is utilized.

(i) The licensed authorized organization must retain all records, reports, and receipts relating to the card-minding system's transactions, maintenance, and repairs for a period of 48 months for examination by the Commission. Such records shall be kept on the premises where the licensed authorized organization is licensed to conduct bingo, or at a location designated in writing to the Commission by the licensed authorized organization.

(j) All card-minding devices must be loaded or enabled for play on the premises where the game will be played.

(k) Card-minding devices may not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first come, first served basis.

(l) After the last game of the bingo occasion has been completed, the licensed authorized organization shall print an occasion report from the site system.

(m) The bingo player must be physically present during the game on the premises where the game is actually conducted.

(n) A licensed authorized organization may not add to or remove any software program related to the conduct of bingo to an approved card-minding system. If the Commission detects or discovers a card-minding system at a bingo premises that is using components or software that were not approved by the Commission as required, the card-minding system is deemed to have an unauthorized modification.

(o) No licensed authorized organization may display, use, or otherwise furnish a card-minding device which has in any manner been



tampered with, or which otherwise may deceive the player or affect a player's chances of winning.

(p) At the time a player establishes a customer account, the licensed authorized organization must notify the player that any unclaimed balances in the customer account at the end of the occasion will be retained by the organization. Information regarding the retention by the licensed authorized organization of the unclaimed balances in a customer account at the end of an occasion must be included in the information the organization must provide to its players pursuant to §402.200 of this chapter. Any unclaimed balances retained by the organization under this subsection shall be considered to be funds derived from the conduct of bingo, deposited into the organization's bingo account, and reported as other income. However, any unclaimed balances deposited into the organization's bingo account are restricted to the organization's charitable purposes, as provided by Texas Occupations Code §2001.453(2) and §2001.454.

(1) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code Chapter 2001, Subchapter 1-1, any balances on a customer account may be used by the customer for any bingo occasion conducted on the same day of any of the organizations in the unit on the premises specified in their bingo licenses.

(2) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, any balances on a customer account may be used by the customer during either occasion.

(q) A licensed authorized organization must comply with the requirements in §402.200(b)(6) of this chapter regarding all bingo equipment malfunctions, including customer accounts on a card-minding system.

(r) Each licensed authorized organization must ensure that the card-minding system records the actual selling price of each card-minding device and electronic bingo card sold.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Lottery Commission

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For further information, please call: (512) 344-5012



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

## 19 TAC §§4.53, 4.54, 4.58, 4.59

The Texas Higher Education Coordinating Board (THECB or Board) adopts amendments to §§4.53, 4.54, 4.58, and 4.59, concerning the Texas Success Initiative, without changes to the proposed text as published in the May 16, 2014, issue of the *Texas Register* (39 TexReg 3799). Specifically, these amendments will add a new definition, add qualifications for mathematics college readiness, add a component to the plan for academic success, allow for pathway-specific college readiness in mathematics; and will add language to comply with Texas Education Code, §51.3062(q-2), regarding exemptions provided to students who successfully complete the college preparatory course described under Texas Education Code, §28.014; define the period of the exemption to the Texas Success Initiative (TSI) and the manner in which the exemption should be applied to an institution of higher education other than the institution that partnered to develop the college preparatory course.

In addition, Senate Bill 215, 83rd Texas Legislature, Regular Session, called for the Board to engage institutions of higher education in a negotiated rulemaking process as described in Subchapter 2008, Government Code in the development of such rules. The amendments to the rules proposed for this section were reviewed and approved by the Negotiated Rulemaking Committee on the Texas Success Initiative on April 2, 2014, and by the Negotiated Rulemaking Committee on Exemptions relating to House Bill 5 College Preparatory Courses on April 16, 2014.

The following comments were received regarding the amendments concerning §4.53, Definitions; §4.54, Exemptions, Exceptions, and Waivers; §4.58, Advisement and Plan for Academic Success; and §4.59, Determination of Readiness to Perform Freshman-Level Academic Coursework.

Comment: The suggested revision from Brian Gottardy, Texas School Alliance, was to consider the following: students who are unable to successfully complete MATH 1332/1342/1442 should have the opportunity, if their academic plans change and they wish to take Algebra intensive courses, to enroll in those courses without additional delay caused by non-credit-bearing "preparatory" coursework. It seems more appropriate to allow students to move on with a concurrent intervention.

Response: The proposed rule changes do allow for a concurrent intervention as suggested in the TSA proposed solution and do not preclude an institution from requiring such a concurrent intervention. Holistic advising (19 TAC §4.55) allows an institution to use multiple factors, including consideration of prior academic coursework, when assessing and placing students. Ultimately, it is the responsibility of the institution of higher education to determine the intervention that best suits each student's particular needs and academic goals. No additional changes were made as a result of this comment.

Comment: Constance Elko, Austin Community College, expressed concerns regarding the proposed amendment to 19 TAC §4.59(d): "My concern is that two levels of TSI complete for math will make the system quite cumbersome to keep accurate. Every time a student changes their major they may change their TSI status. Students would easily go from being TSI complete to being not TSI complete. That is very difficult to explain to a student. I thought that part of the intention of the new TSIA was to have a single standard. It would be much easier to administer and explain TSI rules to students if there was a single standard for being TSI complete the minimum TSIA score of

350, but that colleges could set a higher standard for getting into College Algebra MATH 1314/1414 or Finite Mathematics MATH 1324. Texas had done this when TASP was first used - 230 was complete but a 270 was needed for College Algebra. One of the major strengths of Pathways such as Statway or the New Mathways Project StatPath is that the student has to complete the developmental and the credit course to be TSI complete in math. That means that the students plan to complete the credit course. One of the main issues colleges have is that many students who become TSI complete just do not take the math credit course. Many more students would complete the math credit requirement successfully if we could just get them to take the credit course as soon as they complete the developmental. Building Pathways that does this is really in the best interest of students. If we allow these Pathways to make the student TSI complete before they take the credit course, we will face the same situation of delay, forgetting and then being unsuccessful in the math credit course."

Response: Austin Community College, as well as many other colleges and universities, are currently using the strategy of conferring college readiness after students successfully complete the college level course in the pathway. The purpose of this proposed amendment to 19 TAC §4.59, is to give institutions the opportunity to choose an alternative strategy that best addresses the needs of their students, but not to mandate any particular strategy. The amendment to 19 TAC §4.58 ensures that institutions clearly inform students of the consequences of selecting a specific mathematic pathway model. The Negotiated Rulemaking Committee on Texas Success Initiative recommended unanimously that institutions be given the flexibility to designate two separate college readiness indicators for mathematics based on holistic advising protocols that include considerations for students' chosen career paths. However, institutions are not required to have separate college ready indicators for mathematics. It is the sole discretion of the institution to continue conferring TSI status as it currently does. Colleges, with feedback from their faculty, should make these decisions. Requiring students to enroll in the college-credit course immediately after successful completion of the developmental course or intervention remains an institutional decision. No additional changes were made as a result of this comment.

Comment: The comment from Nancy Long, Trinity Valley Community College, expressed concerns regarding college readiness for students enrolled in mathematics pathways:

"(1) College Algebra was never designed to ready students for Calculus. STEM students should have already completed four years of high school mathematics - including two years of algebra, one year of geometry, and one year of pre-calculus (including at least one-half year of trigonometry). Most STEM students should already have had high school calculus or AP Calculus or college level Calculus concurrent with their high school curriculum. There are students who decide later to pursue a field of study involving STEM courses, and they do typically begin with College Algebra, but it is not designed for STEM students. It is designed to cover general education skills required to make a student competent in mathematics. As with all general education requirements, some find it difficult to study topics that are not immediately obvious to them as being relevant to their field. These topics are nevertheless relevant to being a well-rounded, educated individual capable of handling formulas, calculations, logical inferences, and of being able to communicate about those topics. College Algebra is not intended for STEM majors. STEM majors who start with College Algebra are far behind and will

certainly need more than 120 semester hours of college level coursework to complete their degrees.

(2) Allowing colleges to mark students TSI Math Complete for Non-Algebraic Intensive Studies will provide a path of least resistance for students who I believe should become minimally proficient in algebra. My Registrar has already indicated that once a student is TSI Complete in Math, no course will be blocked for them. Since colleges would have to implement more rules and courses, that they are not required to implement, they won't do so. We'll be back to trying to teach students who have never learned basic algebraic methods. By the way, they need the logical skills and approaches included in College Algebra in other completely separate fields. They need to learn to approach a non-algebra problem by identifying the problem, choosing an approach, recalling the rules of the situation, dividing the problem into parts that can be tackled independently or sequentially, writing out their solution in step-by-step sequential fashion, and draw a logical conclusion and support the reasons for it.

(3) Trying to teach Contemporary Mathematics or Statistics without the student being able to solve quadratic equations, radical equations, and logarithmic equations eliminates most applications, empirical and quantitative reasoning, and critical thinking from those courses. Since algebra is the language of mathematics, it also eliminates the communication CORE Objective from these courses."

Response: It is the decision of the institution to determine whether or not it offers a mathematics pathway model that considers the students' degree plan and career options when recommending courses and interventions for students not college ready in mathematics. If an institution believes that a pathway model for mathematics is not in the best interest of its students, then the institution can continue to provide the options it currently offers for its students. The proposed amendment to the rules does not require an institution to make any changes to its current programs. The purpose of these rule changes is to give institutions the opportunity to choose an alternative strategy if that makes sense for their students, but not to mandate which strategy they select. No additional changes were made as a result of this comment.

The Texas Higher Education Coordinating Board also received five comments in support of mathematics pathway models and the amendments to the rules that allow the institution to classify students as having met Texas Success Initiative requirements based on their chosen pathway. (Mike Turpin, Kilgore College; Aaron Graczyk, Brazosport College; Ed McCraw, Paris Junior College; Bradly Johnson, Northeast Texas Community College; and Barbara Buchanan, Paris Junior College)

The following comments were received regarding the amendments specifically concerning §4.54, Exemptions, Exceptions, and Waivers.

Comment: The suggested revision, received from Brian Gotardy, Texas School Alliance (TSA) and Amy Beneski, Texas Association of School Administrators (TASA), was to consider extending the exemption period beyond the proposed twelve months in order to align with the exemption periods provided in other board rules and to accommodate students unable to pursue postsecondary work within twelve months of graduation.

Response: The rules related to the Texas Education Code (TEC), §28.014, College Preparatory Course, as authorized by House Bill (HB) 5 (83rd Legislative Session), were the result of negotiation among representatives from community colleges,

universities, and public education entities, which comprised the Negotiated Rule-making Committee on Exemptions Relating to HB 5 College Prep Courses (CPC NRMC) (April 16, 2014). The committee was unanimous in its decision that a twelve-month exemption period was appropriate until and unless longitudinal data indicated that student success rates would warrant a longer exemption period. It also agreed that the THECB's regular cycle of rule review and revision (every four years) was a sufficient provision for revisiting the exemption period. The Committee does not agree with the suggested revision because the proposed twelve-month exemption period reflected in 19 TAC §4.54(a)(10), takes into consideration that the College Preparatory Courses are newly developed and, unlike specified assessments (i.e., SAT, ACT, TSI Assessment) with longer exemption periods, lack validation data ensuring certain performance measures correlate with standards of readiness. As this exemption rests on locally developed courses with variations in expectations and performance measures without current data to validate their effect on readiness, it is imprudent to establish at this time a lengthy period of exemption. A twelve-month period of exemption would allow for a gap-year or the early completion of a preparatory course. No additional changes were made as a result of this comment.

Comment: Brian Gottardy, Texas School Alliance (TSA), suggested considering establishing a statewide agreement that authorizes reciprocity of the exemption among all institutions of higher education that sign into the agreement and make a list accessible to the public so students, families, and high school counselors can determine where the course completion is recognized for TSI exemption purposes.

Response: The Committee agrees with the suggestion since there is nothing in the rules as proposed which would prohibit the development of a memorandum of understanding among multiple higher education institutions establishing the reciprocity of their college preparatory course exemption. There is no prohibition on making such agreements public. While it is expected that the first line of communication to students and parents regarding the applicability of a student's TSI exemption would be through the high school providing the course, the committee fully supports making memorandums of understanding publicly available online. No additional changes were made as a result of this comment.

Comment: The suggested revision from Carlos E. Martinez, The University of Texas at Austin, was the following.

"The exemption proposed in §4.54(a)(10) is too limiting. While §51.3062(q-2), Texas Education Code provides authority for the THECB to adopt a rule that applies an exemption at the institution that partners with the school district, it also grants the Commissioner authority to apply the exemption to institutions of higher education other than the partnering institution. We believe the twelve month exemption for students who successfully complete college preparatory courses with respect to the content area of the course should apply to any public institution rather than only to that institution that partners with a school district. This expansion is one that the Legislature considered and granted authority to the Commissioner to exercise, and which we encourage here."

Response: The Committee does not agree with the suggested revision because the proposed twelve-month exemption period and applicability to the partnering institution reflected in 19 TAC §4.54(a)(10) takes into consideration that the College Preparatory Courses are newly developed and, unlike specified assessments (i.e., SAT, ACT, TSI Assessment) with longer exemption

periods, lack validation data ensuring certain performance measures correlate with standards of readiness. As this exemption rests on locally developed courses with variations in expectations and performance measures without current data to validate their effect on readiness, it is imprudent to establish a lengthy period of exemption. A twelve-month period of exemption would allow for a gap-year or the early completion of a preparatory course. The statute, as developed by the 83rd Legislature, limits the applicability of the exemption to the partnering higher education institution, and defers to the expertise of the commissioner in determining the advisability of broadening the applicability of the exemption. The commissioner sought consensus from a broad spectrum of stakeholders who determined that the Legislature's initial determination was the most prudent. As stated previously, however, there is nothing in the rules as proposed which would prohibit the development of multiple higher education institutions establishing the reciprocity of their college preparatory course exemption.

The committee was unanimous in its decision that a twelve-month exemption period and applicability to the partnering institution were appropriate until and unless longitudinal data indicated that student success rates would warrant a longer exemption period. It also agreed that the THECB's regular cycle of rule review and revision (every four years) was a sufficient provision for revisiting the exemption period. No additional changes were made as a result of this comment.

Comment: The comment from Lynn Parks, Baylor University, relates to the applicability of the proposed rules to Early College High Schools as follows.

"Would this have applicability to Early College High Schools? I'm trying to figure out when students going into an ECHS would be TSI tested and what would happen if they didn't pass the TSI. Assuming that ECHS college courses begin in 9th grade, wouldn't incoming students be given the TSI at the end of 8th grade?"

In that case, there will probably be a significant population that doesn't pass all portions of the TSI. Suppose an ECHS student fails the math portion of the TSI. If a local two-year college then provided a remedial math course (say, DMTH 0200), and the ECHS student took and passed the course, he or she would then be okay to proceed with their college math course and other associate's degree program courses - right?"

Response: Yes, the proposed rule is applicable to all public high students graduating under the new foundation plan including students enrolled in Early College High Schools. Issues related to the remainder of the comment are not affected by the proposed rule. Like public high school students, students enrolled in Early College High Schools must demonstrate college readiness as defined by TSI prior to enrolling in a college level courses. 19 TAC §9.146(a) prohibits institutions of higher education from offering funded developmental education (i.e., remedial) coursework in high schools. While a high school student may enroll in a non-funded developmental (remedial) course, the course would not provide an exemption from TSI or qualification for college-level coursework. No additional changes were made as a result of this comment.

The amendments are adopted under the Texas Education Code §51.307, which provides the Coordinating Board with the authority to adopt rules to implement the provisions of Texas Education Code §51.3062, concerning the Success Initiative, and under Texas Education Code §51.3062(q-2), which requires the com-

missioner of higher education to make rules regarding the period of the exemption outlined in the same subsection.

The amendments affect Texas Education Code §51.3062.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

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## SUBCHAPTER G. EARLY COLLEGE HIGH SCHOOLS

### 19 TAC §4.155

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.155, concerning early college high school student eligibility requirements, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3018).

The intent of the amendments is to update the existing rule to align with current statute and rule references regarding Texas Success Initiative assessment requirements for early college high school student eligibility. Language was added in §4.155 that updates references to titles of sections of Texas Success Initiative rules. The amended rule will affect students enrolling in dual credit courses and early college high schools during the 2014 fall semester.

There were no comments received regarding these amendments.

The amendments are adopted under Texas Education Code, Chapter 29, Subchapter Z, §29.908, which states that the board may adopt rules as necessary to exercise its powers and duties under §29.908.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS

## SUBCHAPTER I. RESIDENT PHYSICIAN EXPANSION GRANT PROGRAM

### 19 TAC §§6.175 - 6.184

The Texas Higher Education Coordinating Board (Board) adopts new §§6.175 - 6.184, concerning the Resident Physician Expansion Grant Program, without changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3353).

The intent of these new sections is to specify the Board's criteria and process for awarding grants under the program to encourage the creation of new graduate medical education positions in Texas through community collaboration and innovative funding. In addition, Senate Bill 215, 83rd Texas Legislature, Regular Session, called for the Board to engage institutions of higher education in a negotiated rulemaking process as described in Chapter 2008, Government Code in the development of such rules. The new Resident Physician Expansion Grant Program rules adopted were reviewed and approved by the Negotiated Rulemaking Committee on the Resident Physician Expansion Grant Program on April 11, 2014.

There were no comments received regarding these new sections.

The new sections are adopted under Texas Education Code, Chapter 61, §61.511, which provides the Coordinating Board with the authority to administer the program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. PRIMARY CARE INNOVATION PROGRAM

### 19 TAC §§6.200 - 6.208

The Texas Higher Education Coordinating Board (Board) adopts new §§6.200 - 6.208, concerning the Primary Care Innovation Program. Sections 6.200 - 6.205, 6.207, and 6.208 are adopted without changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3355). Section 6.206 is adopted with changes and will be republished.

The intent of these new sections is to specify the Board's criteria and process for awarding grants under the program to incentivize medical schools that administer innovative programs designed to increase the number of primary care physicians in Texas. A grant under this subchapter may be spent only on a program intended to increase the number of primary care physicians in the state.

In addition, Senate Bill 215, 83rd Texas Legislature, Regular Session, called for the Board to engage institutions of higher education in a negotiated rulemaking process as described in Chapter 2008, Government Code in the development of such rules. The new Primary Care Innovation Program rules adopted were reviewed and approved by the Negotiated Rulemaking Committee on the Primary Care Innovation Program on April 9, 2014.

There were no comments received regarding these new sections.

The new sections are adopted under Texas Education Code, Chapter 58A, Subchapter C, which provides the Coordinating Board with the authority to administer the program.

*§6.206. Award Criteria and Selection for Funding.*

(a) Applicants shall be selected for funding on a competitive basis.

(b) An application must meet the requirements of the RFA and be submitted with proper authorization on or before the day and time specified by the RFA to qualify for further consideration.

(c) The selection process includes an application review and staff recommendation for funding. Board staff shall review applications to determine if they adhere to the grant program requirements and the funding priorities contained in the RFA.

(d) Each application shall:

(1) Target current or prospective medical students;

(2) Provide a detailed explanation of the applicant's primary care innovation program, including a timeline for development and implementation, description of student population identified to participate in the program, description of any other population identified to participate in the program, detailed description of essential budget, and detailed information related to administration and support for the program;

(3) Document how the innovation program would achieve the goals of increasing the number of Texas medical students who pursue a career in Primary Care; and

(4) Incorporate a provision for tracking the career paths of medical student participants in the innovation program, for the four-year period following graduation, including the specialty/subspecialty practiced by the graduates and whether the graduate practiced in the state and, if so, the practice location(s), in each of the four years.

(e) Priority for selection will be given, in the order stated in paragraphs (1) - (5) of this subsection, to applicants that demonstrate an innovative approach to the promotion of primary care specialties, and that include, but are not limited to, one or more of the following:

(1) Evidence supporting conceptual foundation of proposed program;

(2) Evidence of institutional commitment to increase the primary care workforce;

(3) Evidence of institutional support of proposal, such as faculty and staff time, access to institutional resources, and/or funds;

(4) Collaboration across medical schools and/or healthcare delivery organizations; and

(5) Description of a plan for sustainability of the proposed program.

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Bill Franz

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## CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES SUBCHAPTER A. DEFINITIONS

### 19 TAC §9.1

The Texas Higher Education Coordinating Board adopts amendments to §9.1, regarding program development in two-year public colleges, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3019).

The intent of the amendments was to clarify acronyms that are used in the rule text throughout Chapter 9. Language was added to define the acronym for the Southern Association of Colleges and Schools Commission on Colleges. The amended rule will affect public institutions of higher education on or after the 2014 fall semester.

A comment was received from Don Perry at the Dallas County Community College as follows.

Comment: The Dallas County Community College District recommends the following modification to §9.1: Delete newly numbered paragraph (28), Technical courses or programs, based on the fact the definition is already subsumed within the definition of the newly numbered paragraph (32), Workforce education. We believe this action would eliminate redundancy and reduce confusion of terminology.

Staff Response: The portion of the workforce education definition contains mention of continuing education units, which is not contained in the technical courses or programs definition. Staff believes that the technical courses or programs definition has value remaining in §9.1 rule. No alteration to the proposed rule change is recommended.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. TRANSFERABLE ACADEMIC COURSES

### 19 TAC §9.75

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to §9.75, regarding program development in two-year public colleges, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3020).

The intent of the amendment is to remove reference to the Workforce Education Course Manual as a document that lists developmental/remedial courses approved for two-year college instruction and eligible for state funding. The amended rule will affect public two-year colleges on or after the 2014 fall semester.

There were no comments received regarding these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

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## SUBCHAPTER E. CERTIFICATE AND ASSOCIATE DEGREE PROGRAMS

### 19 TAC §9.93, §9.96

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.93 and §9.96, concerning institutional procedures that must be followed for the approval of certificate and associate degree programs in the state of Texas, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3020).

The intent of the amendments was to clarify the process by which Texas public two-year colleges of higher education propose a program for approval with the Coordinating Board. Language was added that describes the process by which the Coordinat-

ing Board staff will handle the initial evaluation of program proposals submitted by public two-year colleges. Language was also added that defines the process by which public two-year colleges must notify other public institutions of higher education of a proposed program 30 days prior to submitting a proposal to the Coordinating Board. The amended rules will affect institutions of higher education on or after the 2014 fall semester. The Coordinating Board staff also made a non-substantive change to §9.96 that corrects the division name.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

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## SUBCHAPTER G. CONTRACTUAL AGREEMENTS

### 19 TAC §§9.121, 9.123, 9.124, 9.126

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§9.121, 9.123, 9.124, and 9.126, concerning contracts established between public institutions of higher education and other institutions of higher education or non-Southern Association of Colleges and Schools Commission on Colleges-accredited organizations, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3022).

The intent of the amendments was to clarify acronyms that are used in the rule text throughout Chapter 9. Language was added to define the acronym for the Southern Association of Colleges and Schools Commission on Colleges. The amended rules will affect public two-year colleges on or after the 2014 fall semester.

There were no comments received concerning these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

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## SUBCHAPTER H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR COLLEGES

### 19 TAC §§9.141 - 9.143, 9.146

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§9.141 - 9.143 and 9.146, concerning partnerships between secondary schools and public two-year colleges, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3023).

The intent of the amendments is to clarify the process by which public two-year colleges may enter into partnerships with secondary schools to develop College Preparatory Courses for high school students. Language was added that revises the description of Partnerships for Remedial or Developmental Instruction for High School Graduates and Partnerships to Develop and Provide College Preparatory Courses for High School Students.

There were no comments received concerning these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 19 TAC §9.147

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §9.147, regarding partnerships between secondary schools and public two-year colleges, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3023).

This new section was added to describe the Coordinating Board rules governing partnerships to develop College Preparatory Courses. The rules affects public two-year colleges on or after the 2014 fall semester.

There were no comments received regarding this new section.

The new section is adopted under Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

### 19 TAC §9.183, §9.184

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.183 and §9.184, regarding academic associate degree and certificate programs, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3024).

The intent of the amendments was to correct the terminology used in the subchapter when referring to the Southern Association of Colleges and Schools Commission on Colleges. The amended rules will affect public two-year colleges on or after the 2014 fall semester.

There were no comments received concerning these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 17. RESOURCE PLANNING SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §§17.1 - 17.3

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§17.1 - 17.3, concerning general provisions, without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4555).

Specifically, §17.1 (Purpose and Scope) and §17.2 (Authority) are amended to reflect the change of the Texas Higher Education Coordinating Board's role from that of an approval authority to a review function. Amendments to §17.3 (Definitions) reflect statutory changes and align with changes throughout Chapter 17.

The adopted amendments were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the proposal.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. BOARD REVIEW

### 19 TAC §§17.10, 17.11, 17.13

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§17.10, 17.11, and 17.13, concerning board review, without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4558).

The amendments implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since

the Coordinating Board is no longer specifically charged to approval capital projects, major changes to this subchapter are required.

Section 17.10 (Board Approval) is changed to modify the scope of the review process. Previously, the Coordinating Board approved capital projects with a project cost of \$4 million or greater. There was no specific mention of a threshold for review in changes to the Texas Education Code and this change specifies the thresholds, as well as limiting the scope to those endeavors explicitly stated in statute. Section 17.11 (Projects Exempt from Board Review) expands §17.10 by outlining the types of projects that would be exempted from the Coordinating Board review process. Section 17.13 (Review Considerations) is amended to reflect the specific areas the Coordinating Board is empowered to review as specified in Texas Education Code, §61.0572 and §61.058.

The adopted amendments adopted were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the proposal.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 19 TAC §§17.12, 17.14, 17.15

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§17.12, 17.14, and 17.15 regarding board approval, without changes to the proposal as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4560).

Section 17.12 (Delegation of Approval Authority), §17.14 (Re-approval of Projects), and §17.15 (Expedited Process for Certain Projects) are repealed. The repeals are necessary to implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer specifically charged to approval capital projects, major changes to this subchapter are required.

The repeal of these sections was reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.



No comments were received concerning the proposal.

The repeals are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058 resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

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## SUBCHAPTER C. RULES APPLYING TO ALL PROJECTS

### 19 TAC §17.20, §17.22

The Texas Higher Education Coordinating Board (Coordinating Board) repeals §17.20 and §17.22, concerning rules applying to all projects, without changes to the proposal as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4560).

The repeal of these sections is necessary to implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer specifically charged to approval capital projects, major changes to this subchapter are required. Two separate sections of the subchapter specifically address the approval process and since the Coordinating Board no longer approves these projects, the sections are no longer needed.

Section 17.20 (Criteria for Approval of Projects) is repealed as the requirements outlined in this section are now the responsibility of the institutional governing board to oversee and certify compliance.

Section 17.22 (Emergency Approval of Projects) is repealed as it only addresses the approval process.

The repeal of these sections was reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the proposal.

The repeal of these sections is adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The repeals were developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 19 TAC §17.21

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.21, concerning rules applying to all projects, without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4561).

The amendments implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer specifically charged with approval of capital projects, major changes to this subchapter are required. This section (Application Procedures) broadly identifies the application process as well as the review schedule and potential actions.

The adopted amendments were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning this proposal.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## SUBCHAPTER D. RULES APPLYING TO NEW CONSTRUCTION AND ADDITION PROJECTS

### 19 TAC §17.30

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.30, concerning rules applying to new construction and/or addition projects, without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4562).

The amendments implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since

the Coordinating Board is no longer specifically charged with approval of capital projects, major changes to this subchapter are required. Section 17.30 (Standards for New Construction and/or Addition Projects) is amended to reflect the review areas explicitly stated in Texas Education, §61.0572 and §61.058.

The adopted amendments were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

No comments were received concerning the proposal.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

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## SUBCHAPTER E. RULES APPLYING TO REPAIR AND RENOVATION PROJECTS

### 19 TAC §17.40

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.40, regarding rules applying to repair and renovation projects, without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4564).

The amendments implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer specifically charged with approval of capital projects, major changes to this subchapter are required. Section 17.40 is amended to reflect the review areas explicitly stated in Texas Education Code, §61.0572 and §61.058.

The adopted amendments were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the proposal.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 19 TAC §17.41

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §17.41, relating to additional requirements, without changes to the proposal as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4564).

Repeal of this section is necessary to implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer specifically charged with approval of capital projects, major changes to this subchapter are required. This section is repealed as it mandates an action that has no specific legislative authority, given recent statutory changes.

The repeal was reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the proposal.

The repeal is adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The repeal was developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. RULES APPLYING TO IMPROVED REAL PROPERTY PURCHASE PROJECTS

### 19 TAC §17.50, §17.51

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.50, regarding rules applying to real property acquisition projects, with changes to the proposed text as published in the June 13, 2014 issue of the *Texas Register* (39 TexReg 4565). Section 17.51 is adopted without changes. The amendments implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer specifically charged to approval capital projects, major changes to this subchapter are required.

Section 17.50 (Standards for Improved Real Property Purchase Projects) is amended to reflect the review areas explicitly stated in Texas Education Code, §61.0572 and §61.058.

Section 17.51 (Additional Requirements) is amended to change the threshold for review from \$300,000 to \$1,000,000.

The amendments adopted in these sections were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning these amendments.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

*§17.50. Standards for Improved Real Property Purchase Projects.*

To facilitate Board review for an improved real property purchase project, an institution shall demonstrate that the project complies with the following standards:

(1) Space Need--The institution shall demonstrate that the real property project complies with the standards required in §17.30(1)(A) of this title (relating to Space Need).

(2) Cost--The proposed purchase price should not exceed the higher of two appraisal values. If the purchase price is greater than the highest appraised value, the institution shall demonstrate the need for purchasing the property at the greater value.

(3) Repair and Renovation--If the project includes repair and renovation of any improvements on the property, the standards in §17.40(1) of this title (relating to Project Standards) shall apply.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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**19 TAC §17.52**

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §17.52, regarding Eminent Domain, without changes to the proposal as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4566). Repeal of this section is necessary to implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer specifically charged to approve capital projects, major changes to this subchapter are required.

Section 17.52 (regarding Eminent Domain) is repealed as the responsibility to ensure compliance with eminent domain statutes falls on the institutional governing board.

The repeal of this section was reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the repeal of this section.

The repeal is adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The repeal was developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

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**SUBCHAPTER G. RULES APPLYING TO  
AUXILIARY ENTERPRISE PROJECTS**

**19 TAC §17.60**

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §17.60, regarding Standards for Auxiliary Enterprise Projects, without changes to the proposal as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4566). This repeal implements statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer authorized to review projects that are exclusively for auxiliary enterprises, this subchapter is no longer needed and is repealed. The repeal of this section was reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the repeal of this section.

The repeal is adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The repeal was developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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## SUBCHAPTER H. RULES APPLYING TO INTERCOLLEGIATE ATHLETIC PROJECTS

### 19 TAC §17.70, §17.71

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §17.70 and §17.71, regarding Rules Applying to Intercollegiate Athletic Projects, without changes to the proposal as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4567). This repeal implements statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer authorized to review projects that are exclusively for Intercollegiate Athletics, this subchapter is no longer needed and is repealed.

The repeal of these sections was reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the repeal of these sections.

The repeal is adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The repeal was developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER I. RULES APPLYING TO ENERGY SAVINGS PERFORMANCE CONTRACTS

### 19 TAC §17.81

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.81, regarding Standards for Energy Savings Performance Contract Projects, with changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4567). The changes to this section are minor in that energy savings performance contracts are limited to project standards for renovations and are no longer subject to the new construction and addition standards.

The adopted amendments were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning these amendments.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

*§17.81. Standards for Energy Savings Performance Contract Projects.*

Project Standards. Energy Savings Performance Contract Projects shall be considered under the provisions of §17.40(1) of this title (relating to Standards for Repair and Renovation Projects).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel

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## SUBCHAPTER J. RULES APPLYING TO TUITION REVENUE BOND PROJECTS

### 19 TAC §17.90, §17.91

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §17.90 and §17.91, regarding rules applying to tuition revenue bond projects, without changes to the proposal as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4568).

The repeals implement statutory changes to Chapter 61 of the Texas Education Code in regards to capital projects. Since the Coordinating Board is no longer specifically charged with approval of capital projects, major changes to this subchapter are required. Due to the alignment of the Coordinating Board

rules with the historic areas of review for tuition revenue bond projects, separate rules are not required and the subchapter is repealed. In the event the Texas Legislature approves tuition revenue bonds and the existing rules are not sufficient, the actual legislation will provide ample justification for future rule amendment.

The repeal of these sections was reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the proposal.

The repeal is adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The repeal of these sections were developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER K. REPORTS

### 19 TAC §17.100, §17.101

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §17.100 and §17.101, regarding reports, without changes to the proposed text as published in the June 13, 2014 issue of the *Texas Register* (39 TexReg 4568).

The amendments implement statutory changes to Chapter 61 of the Texas Education Code (TEC) in regards to capital projects. Since the Coordinating Board is no longer specifically charged with approval of capital projects, major changes to this subchapter are required.

The amendments to §17.100 (Board Reports) and §17.101 (Institutional Reports) reflect the review areas explicitly stated in TEC §61.05821 regarding campus condition reporting. Section 17.101 is further amended to reflect the Coordinating Board's reviewer role as well as specifying the need to collect data in addition to that which is provided by the actual review process.

The adopted amendments were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning the proposal.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amend-

ments were developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER L. FACILITIES AUDIT

### 19 TAC §§17.110 - 17.113

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§17.110 - 17.113, regarding facilities audit, without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4570). While the recent changes to the Texas Education Code did not specifically address the facilities audit as required by Texas Education Code, §61.0583, the scope of inquiry in the audit did change since the Coordinating Board no longer approves capital projects (with the exception of energy savings performance contracts).

These sections are amended to provide limitations to the explicit scope addressed in Texas Education Code, §61.0583, and to specify the review authority of the Coordinating Board.

The amendments adopted in these sections were reviewed and approved by the Negotiated Rulemaking Committee on Capital Projects on May 6, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Coordinating Board located at 1200 E. Anderson Lane, Austin, Texas.

There were no comments received concerning these amendments.

The amendments are adopted as a result of changes to Texas Education Code, §61.0572 and §61.058, resulting from the passage of Senate Bill 215, 83rd Texas Legislature. The amendments were developed via the negotiated rulemaking process as required by the same statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 21. STUDENT SERVICES

### SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

#### 19 TAC §§21.123 - 21.125, 21.128, 21.129

The Texas Higher Education Coordinating Board adopts amendments to §§21.123 - 21.125, 21.128, and 21.129, concerning the Texas B-On-Time Loan Program. Section 21.128 is adopted with changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3026). Amendments to §§21.123 - 21.125 and 21.129 are adopted without changes. The amendments and new language codify new provisions resulting from the passage of Senate Bill 215, 83rd Regular Session of the Texas Legislature.

Specifically, the amendment to §21.123 contains new language stating that, beginning in the fall 2014, institutions that do not offer baccalaureate degrees will be eligible to make continuation awards only.

The amendment to §21.124 deletes language referring to an undergraduate degree or certificate program and replaces it with the term "baccalaureate degree" program.

The amendment to §21.125 contains new language stating that students who first receive BOT loans for terms before the fall of 2014 may continue to receive BOT under rules that existed before the passage of Senate Bill 215, as long as they remain eligible for BOT under the former law and are entitled to loan forgiveness under the former law. Additionally, a statement about enrollment in a bachelor's degree program within 12 months of completing an undergraduate certificate or associate's degree is deleted.

The amendment to §21.128 adds new language stating each institution shall determine the amount of each loan awarded at that institution, not to exceed the amount determined for qualified students at eligible public institutions. In addition, the amendment adds new language stating that private or independent institutions shall receive an allocation only from general revenue appropriations for the academic year. After publishing this section in the *Texas Register*, Board staff realized that, although the statute (SB 215) prescribes the methodology that must be used in determining Texas B-On-Time Loan Program allocations to public institutions, the bill also requires that all financial aid allocation rules be established through the Negotiated Rulemaking process. Therefore, this subsection was not considered by the Board, and the Negotiated Rulemaking Committee will meet for this purpose on August 4, 2014.

The amendment to §21.129 deletes language referring to an undergraduate degree or certificate and replaces it with a baccalaureate degree reference. Language referring to loan forgiveness based on completion of a two-year program or a one-year program is also deleted.

There were no comments received regarding the proposal.

The amendments are adopted under Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

#### §21.128. *Loan Amount.*

(a) For students at public and private or independent four-year institutions, the maximum amount of loan for a semester or term shall be the amount determined by the Board as the average amount of tuition

and required fees for a full-time course load for resident undergraduate students enrolled in baccalaureate degree programs at general academic teaching institutions.

(b) In a manner prescribed by the Board for purposes of this subchapter, each eligible institution that is a private or independent institution of higher education is entitled to receive an allocation only from the general revenue appropriations made for that academic year to eligible private or independent institutions of higher education for the purposes of this subchapter.

(c) In January of each year, the program's annual loan limit for the following academic year shall be posted on the Board's web site.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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#### 19 TAC §21.135

The Texas Higher Education Coordinating Board adopts new §21.135, concerning the Texas B-On-Time Loan Program, without changes to the proposed text as published in the April 18, 2014, issue of the *Texas Register* (39 TexReg 3028). The adopted section would codify new provisions resulting from the passage of Senate Bill 215, 83rd Regular Session of the Texas Legislature.

This new section describes program support activities, to be developed in collaboration with institutions and other entities, to improve participation in BOT, improve loan forgiveness rates, educate students regarding their responsibility to repay the loans if they are not forgiven, and to ensure that students who are required to repay BOT loans receive and understand information regarding default prevention strategies. Additionally, this section adds a requirement for institutions to provide loan repayment and default prevention counseling if the institution's BOT default rate exceeds the statewide average default rate, and if the institution's loan forgiveness rate is less than 50 percent of the statewide average BOT forgiveness rate. The Board, in consultation with eligible institutions, shall prepare materials designed to inform students, parents, and high school counselors about the program and eligibility.

The following comments were received regarding this new section:

One comment was received from William Bloom, Director of Student Financial Aid at Angelo State University, regarding this proposed new section relating to Program Support Activities. Mr. Bloom was interested in knowing the process to be used for collaborating with institutions and other entities in the development, implementation, and evaluation of the support activities described in this section.

Mr. Bloom stated that the changes are good for the students and for the program, and that his questions were about the logistics

of implementing the rules. No specific suggestions were made in the comment.

Staff Response: The staff agrees that the changes are good for the students and for the loan program. No changes are recommended as a result of the comment.

Staff informed Mr. Bloom that the topics noted in his comment would be on the agenda of the Financial Aid Advisory Committee meeting for June 3, 2014. Staff sent a follow-up communication to Mr. Bloom describing six action items resulting from the discussion at the FAAC meeting. Included among them is the Coordinating Board's plan to post the Texas B-On-Time Loan Program 3-year cohort default and forgiveness rates for institutions on the agency B-On-Time Loan Program web page in September of each year, for the prior fiscal year ending August 31. The main decision relating to Mr. Bloom's questions was that the Coordinating Board will be working with Texas Guaranteed (TG) to articulate the elements of an online counseling module that will be posted on the TG web site, so that institutions may direct their students to the module at the most opportune stages of the financial aid process.

The new section is adopted under Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 101. DENTAL LICENSURE

##### 22 TAC §101.11

The State Board of Dental Examiners (Board) adopts new §101.11, concerning employment by an estate of a dentist or person acting for mentally incompetent dentist. The rule is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4591).

New §101.11 provides guidance in the interpretation of Texas Occupations Code §260.001.

The Board received no written comments regarding this new rule.

New §101.11 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties

and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

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TRD-201403838

Nycia Deal

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 475-0977



## CHAPTER 108. PROFESSIONAL CONDUCT

### SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

#### 22 TAC §108.7

The State Board of Dental Examiners (Board) adopts amendment to §108.7, concerning minimum standard of care, general. The rule is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4592).

The amendment of §108.7 provides consistency within the rule language concerning the minimum standard of care.

The Board received no written comments regarding this rule amendment.

The amendment of §108.7 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

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Nycia Deal

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 475-0977



#### 22 TAC §108.8

The State Board of Dental Examiners (Board) adopts amendment to §108.8, concerning records of the dentist. The rule is adopted without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4885).

The amendment of §108.8 provides consistency within the rule language concerning the minimum standard of care.

The Board received one written comment from the Texas Medical Association (TMA) concerning claiming that it would be improper for a dentist to perform a "medical exam" and that changing the rule language to "physical evaluation" may cause confusion as to the proper scope of the dentist's practice. TMA states that the practice of dentistry does not include general physical evaluations of the human body and recommends deletion of this change. The Board's position is that limited physical evaluations have been a requirement of 22 TAC §108.7 for over thirteen years. Currently, §108.7(2) states that dentists shall perform limited physical evaluations for all dental patients and that the examination shall include, but not necessarily be limited to, measurement of blood pressure and pulse/heart rate. Pursuant to §108.7(3), a dentist shall obtain and review an updated medical history and limited physical evaluation when a reasonable or prudent dentist under the same or similar circumstances would determine it is indicated. Section 108.8 concerning records of the dentist did not provide for documentation of the limited physical examination and instead required documentation of "written review of medical history and limited review of medical exam." The Board proposed this amendment to §108.8 in order to provide consistency between §108.7 and §108.8 and require documentation of the limited physical evaluation.

The amendment of §108.8 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

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

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Nycia Deal

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 475-0977



## 22 TAC §108.13

The State Board of Dental Examiners (Board) adopts an amendment to §108.13, concerning the practice of dentistry on certain children. The rule is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4593).

The amendment of §108.13 clarifies that dentists must document the decision to exclude the parent or guardian from the treatment room.

The Board received one written comment regarding this amendment from Dr. Sturrock who stated that this rule was onerous because it is routine in his practice that the parent not be present in case they faint and require treatment. The Board's response is that the rule permits that parents may be present in the treating

room unless the dentist determines that the parent's presence is likely to have an adverse effect on the treatment of the child. The dentist must make a determination of possible adverse effect in order to exclude the parent from the room and the Board can only enforce this provision if the dentist documents his or her decision to exclude the parent.

The amendment of §108.13 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the 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 August 14, 2014.

TRD-201403842

Nycia Deal

General Counsel

State Board of Dental Examiners

Effective date: September 3, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 475-0977



## 22 TAC §108.14

The State Board of Dental Examiners (Board) adopts an amendment to §108.14, concerning Pediatric and Special Needs Case Management; Protective Stabilization. The rule is adopted without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4885).

The amendment to §108.14 clarifies that when treatment is initiated without protective stabilization and the patient becomes uncooperative, protective stabilization is indicated until the dentist is able to reach a safe stopping point.

The Board received no written comments concerning this amendment.

The amendment to §108.14 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the 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 August 14, 2014.

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Nycia Deal

General Counsel

State Board of Dental Examiners

Effective date: September 3, 2014

Proposal publication date: June 27, 2014

For further information, please call: (512) 475-0977





## CHAPTER 110. SEDATION AND ANESTHESIA

### 22 TAC §110.5

The State Board of Dental Examiners (Board) adopts an amendment to §110.5, concerning Moderate Sedation. The rule is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4594).

The amendment to §110.5 clarifies what courses will be accepted for a Level 2 or 3 moderate sedation permit.

The Board received one written comment from the Texas Society of Anesthesiologists in support of this rule amendment.

The amendment to §110.5 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the 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 August 14, 2014.

TRD-201403844

Nycia Deal

General Counsel

State Board of Dental Examiners

Effective date: September 3, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 475-0977



### 22 TAC §110.6

The State Board of Dental Examiners (Board) adopts an amendment to §110.6, concerning Deep Sedation or General Anesthesia. The rule is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4595).

The amendment to §110.6 clarifies what courses will be accepted for a Level 4 sedation permit and who must be present during the procedure.

The Board received one written comment from the Texas Society of Anesthesiologists in support of this rule amendment.

The amendment to §110.6 is adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the 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 August 14, 2014.

TRD-201403845

Nycia Deal

General Counsel

State Board of Dental Examiners

Effective date: September 3, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 475-0977



### 22 TAC §110.9

The State Board of Dental Examiners (Board) adopts amendments to §110.9, concerning Anesthesia Permit Renewal. The rule is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4596).

The amendments to §110.9 clarify what courses will be accepted to renew anesthesia permits.

The Board received one written comment from the Texas Society of Anesthesiologists in support of this rule amendment.

The amendments to §110.9 are adopted under Texas Occupations Code §254.001(a). The Board interprets §254.001(a) to give the Board authority to adopt rules necessary to perform its duties and ensure compliance with state law relating to the practice of dentistry to protect the public health and safety.

No other statutes, articles, or codes are affected by the 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 August 14, 2014.

TRD-201403846

Nycia Deal

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 475-0977



## PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

### CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

#### 22 TAC §§153.3, 153.5, 153.8 - 153.11, 153.13, 153.15, 153.17 - 153.21, 153.23 - 153.27, 153.33, 153.37

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.3, The Board; §153.5, Fees; §153.8, Scope of Practice; §153.9, Applications; §153.10, Issuance of Certification, License, or Trainee Approval; §153.11, Examinations; §153.13, Educational Requirements; §153.15, Experience Required for Certification or Licensing; §153.17, Renewal or Extension of Certification and License or Renewal of Trainee Approval; §153.18, Appraiser Continuing Education (ACE); §153.19, Licensing and Certification for Persons

with Criminal Histories; §153.20, Guidelines for Revocation, Suspension, Denial of Licensure or Certification; Probationary Licensure; §153.21, Appraiser Trainees and Sponsors; §153.23, Inactive Status; §153.24, Complaint Processing; §153.25, Temporary Out-of-State Appraiser Registration; §153.33, Signature or Endorsement of Appraisal; and §153.37, Criminal Matters Referred to Law Enforcement, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4083).

The amendments are made following a comprehensive rule review of Chapter 153 to better reflect current TALCB procedures, to conform TALCB rules with criteria established by the Appraiser Qualifications Board (AQB), and to simplify and clarify where needed.

The amendments capitalize the term "Board" and replace the term "licensee" with "license holder" throughout the chapter. The amendments also remove redundant or unused provisions and restructure certain rules to improve readability. Other specific amendments are as follows:

The amendments to §153.3 clarify that the TALCB meetings are conducted in accordance with Robert's Rules of Order unless state law or TALCB rules require otherwise.

The amendments to §153.8 remove an outdated subsection relating to provisional license, which are no longer issued by the TALCB.

The amendments to §153.9 clarify the date on which an applicant may reapply after TALCB initially denies a license application. This amendment conforms §153.9 with the changes previously made to §157.7 relating to Denial of a License.

The amendments to §153.11 clarify that an examination fee must be paid each time an examination is taken.

The amendments to §153.17 clarify the deadlines and requirements for renewing a license or requesting an extension to renew a license.

The amendments to §153.18 clarify the requirements for Appraiser Continuing Education.

The amendments to §153.19 clarify the licensing requirements for persons with criminal history and remove redundant provisions to better align the rule with the requirements in Texas Occupations Code §53.022.

The amendments to §153.21 clarify the obligations of a sponsoring appraiser.

The amendments to §153.23 clarify when a license holder may request to be placed on inactive status and the requirements that must be satisfied for a license to return to active status.

The amendments to §153.24 capitalize the terms "Complainant" and "Respondent" and restructure the text of the rule to clarify when a formal complaint is opened.

The reasoned justification for the amendments is to align the rules with current TALCB practices and procedures, to simplify and clarify where needed, and to improve consistency and readability.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are con-

sistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the amendments.

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 August 18, 2014.

TRD-201403895

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: September 7, 2014

Proposal publication date: May 30, 2014

For further information, please call: (512) 936-3652

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## PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

### CHAPTER 463. APPLICATIONS AND EXAMINATIONS

#### 22 TAC §463.17

The Texas State Board of Examiners of Psychologists adopts the repeal to §463.17, concerning Failure to Appear for Examination, without changes to the proposed text published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4610). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted would delete this rule in its entirety. Simultaneously with this adoption, an amendment is being adopted that clarifies the substance of this rule and incorporates same into Board rule §463.20.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 August 14, 2014.

TRD-201403847

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: September 3, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 305-7700

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**22 TAC §463.20**

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.20, concerning Refunds and Transfer of Application and Examination Fees, without changes to the proposed text published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4610). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will clarify and consolidate Board rules §463.17 and §463.20, and correct a conflict between the rules following migration of the Jurisprudence Examination online whereby the Jurisprudence Examination fee may be transferred to a subsequent exam, one time only, if an examinee fails to complete an examination and can demonstrate good cause. The amendment also deletes language made obsolete by the migration of the Jurisprudence Examination to an online format.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 August 14, 2014.

TRD-201403848  
Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Psychologists  
Effective date: September 3, 2014  
Proposal publication date: June 13, 2014  
For further information, please call: (512) 305-7700

◆ ◆ ◆  
**CHAPTER 473. FEES**

**22 TAC §473.1**

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.1, concerning Application Fees (Not Refundable), without changes to the proposed text published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4611). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will reduce application fees for applicants with military experience. A fee reduction for such applicants will serve to supplement those changes previously made in order to comply with Senate Bill 162 and the changes made to Chapter 55 of the Occupations Code by the 83rd Legislature, regarding licensing of applicants with military experience.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 August 14, 2014.

TRD-201403849  
Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Psychologists  
Effective date: September 3, 2014  
Proposal publication date: June 13, 2014  
For further information, please call: (512) 305-7700

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**22 TAC §473.2**

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.2, concerning Examination Fees, with changes to the proposed text published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4611). The rule will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to reflect the increased cost of administering the Jurisprudence Examination in an online format through a third-party vendor.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

*§473.2. Examination Fees.*

The following examination fees are non-refundable.

- (1) Examination for the Professional Practice of Psychology--\$600
- (2) Jurisprudence Examination:
  - (A) --\$210 through August 31, 2014
  - (B) --\$200 effective September 1, 2014
- (3) Oral Examination--\$320

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 August 14, 2014.

TRD-201403850

Darrel D. Spinks  
Executive Director  
Texas State Board of Examiners of Psychologists  
Effective date: September 3, 2014  
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For further information, please call: (512) 305-7700



## PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

### CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

#### SUBCHAPTER A. GENERAL PROFESSIONAL ETHICS

##### 22 TAC §573.9

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.9, concerning Nonresident Consultants, without changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3359). The rule will not be republished.

Section 573.9 currently provides that veterinarians licensed in other states may enter the State of Texas, whether in person, by mail, or by electronic means, for purposes of consultation; however, the rule further requires that consultants must, at all times, consult under the direct supervision of a Texas veterinarian. Direct supervision requires the Texas licensed veterinarian to be physically on the same premises as the nonresident veterinarian under supervision. Therefore, a nonresident veterinarian cannot provide consultation via mail or electronic means as direct supervision is not possible. To allow for consultations via mail and electronic means, the Board adopts the amendment to require general supervision rather than direct supervision. General supervision requires the Texas veterinarian to be readily available to communicate with the nonresident veterinarian being supervised.

The Board did not receive any comments on the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

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 August 14, 2014.  
TRD-201403835

Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Effective date: September 3, 2014  
Proposal publication date: April 25, 2014  
For further information, please call: (512) 305-7563



## CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

### SUBCHAPTER B. STAFF

##### 22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §577.15, concerning Fee Schedule, without changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3360). The rule will not be republished.

The Board adopts an amendment to §577.15 to add fees for veterinary technician and equine dental provider licensures to cover the administrative costs associated with permitting renewals of licensure to occur on the Internet, through a third party vendor. The amendment will increase fees for regular and inactive license renewals by \$5. The amendment will be effective January 1, 2015. The increase in funding through new and increased fees will allow the Board to renew licenses for veterinary technicians and equine dental providers effectively and efficiently, and thereby continue to protect the interests of the public and the animals of Texas.

The Board did not receive any comments on the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter; and §801.161, which requires the Board to ensure that the public is able to interact with the Board on the Internet.

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 August 14, 2014.

TRD-201403836  
Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Effective date: September 3, 2014  
Proposal publication date: April 25, 2014  
For further information, please call: (512) 305-7563



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 289. RADIATION CONTROL

## SUBCHAPTER C. TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Executive Commissioner of Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §289.101 and new §289.101, concerning the memorandum of understanding between the department and the Texas Commission on Environmental Quality (TCEQ) regarding radiation control functions without changes to the proposed text as published in the April 4, 2014, issue of the *Texas Register* (39 TexReg 2408) and, therefore, the section will not be republished.

### BACKGROUND AND PURPOSE

The repeal and new rule are necessary to comply with Senate Bill (SB) 347, 83rd Legislature, Regular Session, 2013. The purpose of the repeal and new rule is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the department and the TCEQ in the regulation of sources of radiation in accordance with Health and Safety Code, §401.011 and §401.069, in order to provide a consistent approach and to avoid duplication of radiation control functions.

In addition, this rule proposal satisfies the four-year review of agency rules in Government Code, §2001.039, which requires that each state agency review every four years its rules and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.101 has been reviewed and the department has determined that the reasons for adopting new §289.101 continue to exist.

### SECTION-BY-SECTION SUMMARY

The repeal of the existing rule and the new rule establish respective agency responsibilities regarding general agency jurisdiction, jurisdiction over specific activities and wastes, coordination of regulatory activities, coordination of enforcement and incident response activities, mutual assistance, and miscellaneous items. New §289.101 updates both agency names, makes minor grammatical and typographical corrections, updates technical terminology, corrects and/or updates rule reference citations; and reorganizes rule text. In addition, the new rule omits the language regarding in situ uranium mining as a result of SB 1604, 80th Legislative Session, 2007, that amended Health and Safety Code, §401.011, and transferred the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal from the department to the TCEQ.

### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period. A public hearing was conducted on April 16, 2014, and no attendees were present.

### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

### 25 TAC §289.101

#### STATUTORY AUTHORITY

The repeal is adopted under the SB 347, 83rd Legislature; Health and Safety Code, §401.069, which allows the department

and the TCEQ to adopt a memorandum of understanding defining their respective duties; Health and Safety Code, §401.011 which defines generally the jurisdiction of the department and TCEQ; Health and Safety Code, §401.051, which provides the agencies with the authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

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 August 18, 2014.

TRD-201403912

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: September 7, 2014

Proposal publication date: April 4, 2014

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



### 25 TAC §289.101

#### STATUTORY AUTHORITY

The new section is adopted under the SB 347, 83rd Legislature; Health and Safety Code, §401.069, which allows the department and the TCEQ to adopt a memorandum of understanding defining their respective duties; Health and Safety Code, §401.011 which defines generally the jurisdiction of the department and TCEQ; Health and Safety Code, §401.051, which provides the agencies with the authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

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 August 18, 2014.

TRD-201403913

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: September 7, 2014

Proposal publication date: April 4, 2014

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



## SUBCHAPTER D. GENERAL

## 25 TAC §289.204

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §289.204, concerning fees for certificates of registration, radioactive material licenses, emergency planning and implementation, and other regulatory services. Section 289.204 is adopted without changes to the proposed text as published in the April 4, 2014, issue of the *Texas Register* (39 TexReg 2411) and therefore, the section will not be republished.

### BACKGROUND AND PURPOSE

The amendment to §289.204 of the department's radiation control rules is necessary to comply with Senate Bill (SB) 347, 83rd Legislature, Regular Session, 2013, a portion of which is codified at Health and Safety Code (HSC), §401.307, which increases both the maximum and the minimum amounts to be held in the state's total perpetual care account (PCA) for radiation.

House Bill 1678, 78th Legislature, Regular Session, 2003, amended HSC, §401.301(d), directing the department to collect an additional 5% fee from radioactive material licensees to be deposited to the department's radiation PCA. The funds in the PCA are to be used to pay for measures to prevent or mitigate adverse effects of abandonment of radioactive materials, default on a lawful obligation, insolvency, or other inability of licensees to meet radiation control requirements. The department commenced collection of these fees effective September 1, 2004. In November 2008, the department suspended collection of this 5% fee when the total amount in the PCA reached \$500,000, the legislative cap previously imposed.

Under SB 347, the cap of the state's PCA was raised from \$500,000 to \$100 million, effective September 1, 2013. More specifically, when the balance of the state's PCA, to which both the department and the Texas Commission on Environmental Quality (TCEQ) now contribute, totals \$100 million, further collection of these fees is to be suspended. The department collects this 5% fee from its radioactive material licensees, excluding licensees that are authorized only for diagnostic nuclear medicine. If and when the balance of the state's PCA falls to \$50 million or less, the 5% fee is to be reinstated.

This rule adoption also satisfies the four-year review of agency rules in Government Code, §2001.039, which requires that each state agency review every four years its rules and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.204 has been reviewed in its entirety and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule are necessary as outlined in this preamble.

### SECTION-BY-SECTION SUMMARY

A change to §289.204(d)(5) clarifies that radioactive material licensees authorized only for diagnostic nuclear medicine are not required to pay this additional 5% fee.

The amendment to §289.204(d)(5)(B) increases the state's PCA cap from \$500,000 to \$100 million and raises the minimum amount to be maintained in the PCA from \$350,000 to \$50 million. If and when the balance of the total PCA exceeds \$100 million, the 5% fee is to be suspended; if and when the balance is reduced to \$50 million or less, the department is to reinstate the additional 5% fee.

## COMMENTS

A public hearing was conducted on April 16, 2014, and no attendees were present. The department, on behalf of the commission, has reviewed and prepared a response to a comment received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenter was an individual who was in favor of the rule and requested an explanation regarding the rule as discussed in the comment summary.

**Comment:** Concerning §289.204(d)(5), the commenter requested an explanation of the rule text that states "excluding licensees that are authorized only for diagnostic nuclear medicine" and inquired why these types of licensees are not charged the 5% fee.

**Response:** The commission acknowledges the comment. In 2003, the Legislature established requirements in Health and Safety Code, Chapter 401, directing the radiation regulatory agencies to collect an additional 5% fee from radioactive material licensees, to be deposited to the PCA, so that these agencies would have accessible funds to be used for any necessary radioactive material contamination clean-up and/or storage of radioactive material sources when a radioactive material licensee abandons licensed radioactive material. The radioisotopes used for diagnostic nuclear medicine have a very short half-life and decay quickly, so if radioactive material licensees that are "exclusively authorized only for diagnostic nuclear medicine" abandon licensed radioactive material, the radiation regulatory agencies will not have to expend funds collected from the additional 5% fee because there will be no need for radioactive material contamination clean-up and/or storage of radioactive material sources. Therefore, the department does not charge the additional 5% fee to radioactive material licensees that are "exclusively authorized only for diagnostic nuclear medicine." No change was made to the rule as a result of this comment.

### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

### STATUTORY AUTHORITY

The amendment is adopted under SB 347, 83rd Legislature (a portion of which is codified at Health and Safety Code, §401.307); Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.302, which allows the department to collect fees from each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

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 August 18, 2014.

TRD-201403925

Lisa Hernandez  
General Counsel

Department of State Health Services

Effective date: September 7, 2014

Proposal publication date: April 4, 2014

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



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER F. MOTOR VEHICLE SALES TAX

###### 34 TAC §3.68

The Comptroller of Public Accounts adopts an amendment to §3.68, concerning United States and foreign military personnel stationed in Texas, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5112). This section is amended to implement House Bill 2357, 82nd Legislature, 2011, to revise tax payment due dates.

Subsection (c)(1) is amended to change the payment due date to 30 calendar days from the date of Texas sale or first use in Texas.

Subsection (c)(2) is amended to change the payment due date for a member of the United States military, of a reserve unit of the United States military, of the Texas National Guard, or of the National Guard of another state who is on active military duty under an order of the President of the United States to no later than 60 calendar days after the date of sale or first use in Texas.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Transportation Code, §501.145.

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 August 13, 2014.

TRD-201403818

Ashley Harden

General Counsel

Comptroller of Public Accounts

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Proposal publication date: July 4, 2014

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



## SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

### 34 TAC §3.345

The Comptroller of Public Accounts adopts new §3.345, concerning annual refund program for providers of cable television, Internet access, or telecommunications services, with changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4187). This section implements House Bill 1133, 83rd Legislature, 2013, effective September 1, 2013, which amended Tax Code, Chapter 151, to add new §151.3186, relating to a sales and use tax refund for certain tangible personal property used to provide cable television services, Internet access services, or telecommunications services.

Comments regarding the definition of the term "directly" in subsection (a)(3) were received from Mr. Dale Laine of the Texas Cable Association. Mr. Laine recommended that the proposed definition be deleted or, in the alternative, that a different definition of the term specifically addressing cable television services, Internet access services, and telecommunications services be adopted. The comptroller appreciates that the definition of the term "directly" proposed for adoption may prove confusing in the context of the provision of a service. Consequently, the comptroller agrees to Mr. Laine's request that the proposed definition be deleted. The comptroller will work with industry to better define this term for proposal at a future date.

Comments were received regarding subsection (a)(7)(B)(iii) from Mr. Seth Kaufman, of AT&T Management Services, LP, proposing substituting the word "or" for the word "and" in the first line of the subsection. The comptroller agrees with and adopts the requested change.

Comments proposing a non-binding Equipment Advisory List ("EAL") be added to the proposed section to streamline the refund process were received from Mr. Laine. The comptroller considered a pre-approved equipment list prior to and during the drafting stage of this section but determined that a single pre-approved list would be insufficient to address the three industries eligible for the refund. The same holds true for an advisory ("by way of example") list, as well. Ever-changing technology, the ability to use listed equipment for both qualifying and non-qualifying purposes, and the fact that audit intervention and review would still be necessary to ensure compliance are all issues that outweigh the potential benefit of such a list, regardless of whether it contains pre-approved items or is merely advisory. Further, an equipment advisory list would not be binding on either the comptroller or any party requesting a refund, so it would ultimately lead to the same disputes over qualifying and non-qualifying equipment. The comptroller declines to revise the proposed section as requested.

Comments regarding a filing extension due to unforeseen events were received from Mr. Laine. Similar comments were received regarding subsection (d)(4)(B) from Mr. Kaufman proposing the addition of the phrase "unless such person is granted additional

time by the Comptroller." Commenters suggested an amendment to include a provision for requesting a filing extension. The comptroller considered existing statutory provisions, including the lack thereof, for requesting an extension of time to file a refund claim due to extraordinary circumstances. The proposed section adopts a process whereby a deadline to submit a refund is established so claims can be timely paid on an annual basis while allowing for a refund claim to be filed subject to the normal statute of limitations and be considered, provided adequate funds exist. The comptroller declines to revise the proposed section as requested.

Comments regarding an opportunity to cure defective filings were received from Mr. Laine. The proposed section clearly identifies the information required for requesting a refund. Providing additional time to cure defective submissions would add an unneeded time delay to processing correct, timely filed requests within each calendar year. Further, the proposed section provides a refund hearing may be requested as set out in §3.325(e) of this title (relating to Refunds and Payments Under Protest) to resolve the denial of requested refunds. The comptroller declines to revise the proposed section as requested.

Comments were received regarding subsection (d)(4)(C)(iii) from Mr. Kaufman proposing including the phrase "described in §3.345(d)(3)". The comptroller believes the proposed section language is self-explanatory and the requested change is unnecessary. The comptroller declines to adopt the requested change.

Comments were received regarding subsection (d)(4)(C)(iv) from Mr. Kaufman proposing the term "this subsection" be changed to "3.345(d)(4)(B)". The comptroller believes the proposed section language is self-explanatory and the requested change is unnecessary. The comptroller declines to adopt the requested change.

Comments regarding the appeals process in subsection (e)(4) were received from Mr. Laine. He requested clarification regarding notice requirements and intervention in appeal proceedings by requestors for the same refund period. Neither the statute nor the proposed section alters the appeals process with respect to refunds under this program. The comptroller declines to revise the proposed section as requested.

Comments were received regarding subsection (e)(5) from Mr. Kaufman proposing the addition of the phrase "for a particular tax period." The comptroller has amended subsection (e)(5) to clarify final refund payments for each annual tax period will be issued when all the applicable refund proceedings for the same annual tax period are final.

Comments regarding the retention of pro rata refunds were received from Mr. Laine. He proposes the distribution of disputed refunds which are successfully appealed as a pro rata share of the calendar year in which the appeal becomes final. The proposed alternative would contravene the statute. The comptroller declines to revise the proposed section as requested.

Subsection (a) addresses definitions. The term "in or during" is defined in paragraph (3) to explain the manner in which equipment must be used by a provider to qualify for a sales tax refund under this section. Paragraph (1) defines the term "cable television services" by reference to §3.313 of this title (relating to Cable Television Services); paragraph (2) defines the term "data processing services" by reference to §3.330 of this title (relating to Data Processing Services); paragraph (4) defines

the term "information services" by reference to §3.342 of this title (relating to Information Services); paragraph (5) defines the term "Internet access services" by reference to §3.366 of this title (relating to Internet Access Services); and paragraph (11) defines the term "telecommunications services" by reference to §3.344 of this title (relating to Telecommunications Services) to provide consistency within this title. Paragraph (6) defines the term "provider" by reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, Collection and Exemption Rules, and Criminal Penalties), §3.344 of this title, and §3.313 to promote consistency within this title. Paragraph (7) defines the term "qualifying purchase" to set out the purchases for which a sales tax refund may be requested under §151.3186. Paragraph (8) defines the term "refund request date" to establish the date by which providers should request refunds for sales tax paid on qualifying purchases in the previous year. Paragraph (9) defines the term "requestor" to provide a single term for providers and subsidiaries of providers that seek a refund under §151.3186. Paragraph (10) defines the term "subsidiary of a provider" by reference to Business Organizations Code, §1.002(85). The definition also references the definition of the term "parent" in the Business Organizations Code as that term is an integral factor in the definition of the term "subsidiary."

Subsection (b) identifies those persons who are entitled to request a refund pursuant to Tax Code, §151.3186. It explains that both providers and subsidiaries of providers are eligible to receive a refund under this section.

Subsection (c) identifies the specific sales and use tax a person entitled to request a refund under Tax Code, §151.3186 is eligible to include in the refund request. Further, subsection (c) identifies those taxes that are not eligible for inclusion in the refund request.

Subsection (d) sets out the process by which a refund request must be submitted, including identification of the documentation that is required to be provided in conjunction with the refund request. Subsection (d) also requires electronic filing of the refund request unless the requestor requests and receives approval to file the request by an alternate method. Paragraph (4) provides that the refund claim is subject to audit verification and that the requestor must respond within 30 days to a written request for additional information. Paragraph (5) explains that interest will not be paid on the refunds. Paragraph (6) provides that if the refund request pursuant to Tax Code, §151.3186 was granted in whole or in part, specific items included in the approved refund request may not be the subject of any other refund request.

Subsection (e) sets forth the manner in which the refund is calculated for requests filed by the applicable refund request date when the total requested refund amount from all requestors is greater than \$50 million and when the total is less than or equal to \$50 million. Paragraphs (2) - (5) explain when refunds will be issued and the refund denial process. Paragraph (6) provides that refund claims cannot be amended after the applicable refund request date and any additional items received after the applicable refund request date will be treated as a separate refund claim and processed under subsection (f).

Subsection (f) explains the process for requests for refund received after the applicable refund request date.

The new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement



of provisions of Tax Code, Title 2, and taxes, fees, or other charges or refunds which the comptroller administers under other law.

The new section implements Tax Code, §151.3186 (Property Used in Cable Television, Internet Access, or Telecommunications Services).

§3.345. *Annual Refund Program for Providers of Cable Television, Internet Access, or Telecommunications Services.*

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

(1) Cable television services--This term has the meaning as assigned by §3.313 of this title (relating to Cable Television Services).

(2) Data processing services--This term has the meaning as assigned by §3.330 of this title (relating to Data Processing Services).

(3) In or during--Within the course of an actual activity, such as transmission or routing. For example, a cable carrying a cable television services' signal to a customer's home is used in or during the conveyance of the signal in order to provide cable television services. In contrast, equipment merely used while the cable is carrying the signal, such as office furniture or an air conditioning system, is not used in or during the conveyance of the services.

(4) Information services--This term has the same meaning as assigned by §3.342 of this title (relating to Information Services).

(5) Internet access services--This term has the same meaning as assigned by §3.366 of this title (relating to Internet Access Services).

(6) Provider--A seller, as defined by §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, Collection and Exemption Rules, and Criminal Penalties) and §3.344 of this title (relating to Telecommunications Services), who supplies or otherwise makes available cable television services, Internet access services, or telecommunications services to the public, or a segment of the public, for consideration.

(7) Qualifying purchase--Tangible personal property:

(A) purchased, leased, or rented by a provider or a subsidiary of a provider on which sales and use tax was paid by the provider or the subsidiary; and

(B) that is directly used or consumed by the provider or the subsidiary in or during:

(i) the distribution of cable television services by the sending or relaying of video programming for the fulfillment of cable television services, to subscribing or paying customers;

(ii) the provision of Internet access services by making available to the public, or a segment of the public, for consideration the means or method by which users can connect individual computer terminals, computers, mobile devices, or computer networks to the Internet; or

(iii) the transmission by the process of creating, converting, sending, or propagating, for reception elsewhere, sounds or symbols into an analog or digital information signal, by telegraph, telephone, satellite, facsimile, or any other method now in existence or that may be devised, including Voice over Internet Protocol (VoIP), via any medium, such as wire, coaxial cable, microwave, optical fiber, or radio frequency; conveyance by the carriage, as by an outdoor telephone line

or a satellite beam; routing by the selection of conveyance pathways; or reception by the acquisition, as by a satellite dish, of a telecommunications services' signal, where the transmission, conveyance, routing, or reception is specific to the direct provision of the services to the customer or a general or limited area, whether the signal remains in its original form or is subsequently amplified, filtered, encoded, decoded, or otherwise altered.

(C) Qualifying purchases do not include supporting or ancillary functions, such as office operations, field operations, marketing, transportation, warehousing, data storage, or similar operations that do not directly result in the distribution of cable television services; the provision of Internet access services; or the transmission, conveyance, routing, or reception of telecommunications services.

(8) Refund request date--

(A) September 2, 2014, for tax paid September 1, 2013, through December 31, 2013, on qualifying purchases made on or after September 1, 2013.

(B) For tax paid on or after January 1, 2014, on qualifying purchases made on or after September 1, 2013, March 31 of the year immediately following the calendar year in which the tax was paid. If March 31 falls on a Saturday, Sunday, or legal holiday, the refund request date will be the next business day. For example, a refund request for taxes paid during calendar year 2014 on qualifying purchases made on or after September 1, 2013, is due by March 31, 2015.

(9) Requestor--The provider or subsidiary of a provider submitting the refund request.

(10) Subsidiary of a provider--A subsidiary, as defined in Business Organizations Code, §1.002(85), for which a cable television service provider, Internet access service provider, or telecommunications service provider is the parent, as that term is defined in Business Organizations Code, §1.002(65).

(11) Telecommunications services--This term has the same meaning as assigned by §3.344 of this title.

(b) Persons eligible for refund request. Providers of cable television, Internet access, and telecommunications services and their subsidiaries are entitled to request a refund under this section.

(c) Sales and use tax eligible for refund.

(1) State sales and use taxes paid on qualifying purchases made on or after September 1, 2013, are eligible for a refund under this section.

(2) Local sales and use taxes are not eligible for a refund under this section.

(3) Sales and use taxes paid on property directly used or consumed in or during the provision, creation, or production of data processing services or information services are not eligible for a refund under this section, except when those services are provided in conjunction with and are merely incidental to the provision of Internet access services, as set out in §3.366(a)(2) of this title.

(d) Request for refund.

(1) The total amount of state sales and use tax that can be refunded to all requestors pursuant to this section for any one calendar year is \$50 million.

(2) Each requestor must file the refund request electronically or in the format prescribed by the comptroller. The postmark date or its electronic equivalent on a refund request determines the filing date.

(A) A requestor required to file a refund request electronically who is unable to do so due to hardship, impracticality, or other valid reason may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method. A waiver must be requested no later than 30 days prior to the refund request date. If the 30th day falls on a Saturday, Sunday, or legal holiday, the waiver must be requested by the next business day.

(B) A requestor filing a refund request electronically may use an application provided by the comptroller, software provided by the comptroller, or commercially available software that satisfies requirements prescribed by the comptroller.

(3) The refund request must contain the following information for each transaction for which a refund of sales and use taxes is requested:

(A) the requestor's name, address, and taxpayer identification number;

(B) if the requestor is a subsidiary of a provider, the parent provider's name, address, and taxpayer identification number;

(C) identification of the provider's industry as either, cable television service, Internet access service, or telecommunications service;

(D) the name, address, and taxpayer identification number of the seller of the qualifying purchase for each identified transaction;

(E) the invoice number, if applicable, for each identified transaction;

(F) the amount of sales and use tax paid on the qualifying purchase and the manner in which the tax was paid, such as accrued and paid by the provider or paid to the seller;

(G) the date of each transaction;

(H) a description of each item, or like items, purchased;

(I) the purchase amount of each item subject to refund; and

(J) the total amount of sales and use tax refund requested per item identified.

(4) A refund request submitted pursuant to this section is subject to audit verification.

(A) Additional information may be requested during the verification process.

(B) If the comptroller requests in writing additional information, the person requesting the refund must submit the requested information within 30 calendar days.

(C) A request will be reduced by a determination that the request includes:

(i) items that are not qualifying purchases;

(ii) items on which no sales or use tax was paid;

(iii) items without supporting documentation; or

(iv) items for which additional information requested by the comptroller was not received within 30 calendar days, as required by this subsection.

(5) Tax Code, §151.3186 does not provide for a refund of interest and therefore no interest will be paid on refunds requested under this section.

(6) Multiple refunds on the same items are not allowed. Requestors may not seek a refund or credit under another provision of Tax Code, Chapter 151 for any item on which sales or use tax was paid and for which a refund was requested under this section unless the refund request under this section for the specific item was denied in full.

(e) Requests for refund filed by the applicable refund request date.

(1) The maximum amount each requestor can be refunded under this section is equal to:

(A) the cumulative amount of state sales and use tax paid by the requestor on qualifying property during the calendar year immediately preceding the refund request date, if the total amount of eligible state sales and use tax refund requests by all requestors for which a refund is approved under this section is equal to or less than \$50 million for the calendar year; or

(B) a pro-rated amount of the state sales and use tax paid by the requestor on qualifying property during the calendar year immediately preceding the refund request date, if the total amount of eligible sales and use tax refund requests by all requestors received by the refund request date for which a refund is approved under this section exceeds \$50 million for the calendar year.

(2) By no later than December 31, 2014, for the refund request date of September 2, 2014, or thereafter by August 31 for the refund request date of March 31:

(A) the comptroller will issue a warrant to each requestor whose refund claim is approved in whole or in part. The warrant will be equal to:

(i) the total refund amount approved for the requestor, if the total amount of eligible requests for refund is less than or equal to \$50 million; or

(ii) if the total amount of eligible requests for refund is greater than \$50 million, a pro-rated amount of the \$50 million calculated by dividing each requestor's approved refund amount by the total amount of eligible requests for refund; and

(B) if the refund request is denied in full or in part, the comptroller will issue a notice advising the requestor:

(i) that the refund request was denied, in whole or in part; and

(ii) of the requirements of subsection (d)(3) of this section that were not met.

(3) The comptroller will not issue an initial refund to a requestor whose refund request is denied in full.

(4) Requestors whose refund requests are denied, in full or in part, may request a refund hearing within 30 days of notice from the comptroller as set out in §3.325(e) of this title (relating to Refunds and Payments Under Protest).

(5) Final refund payments will be issued to all eligible requestors once all refund hearings or judicial proceedings related to the same refund request date filed in accordance with Tax Code, Chapter 112, if any, are final.

(A) If the total of all approved refunds is less than or equal to \$50 million, each requestor will be issued a final refund payment equal to the requestor's final approved refund amount, less any initial refund payment issued.

(B) If the total of all approved refunds is greater than \$50 million, the pro rata distribution formula will be recalculated to determine the total amount of refund due to each requestor for their approved claim as a percentage of all approved claims. Final payments will be issued based on the final pro rata distribution formula less any initial refund payment issued.

(C) In no case shall the total amount of refund issued to a requestor exceed the requested amount in the requestor's refund request.

(6) A refund request filed by the applicable refund request date cannot be amended after the applicable refund request date. If a requestor submits additional items after the applicable refund request date, the additional items will be considered a separate refund request and will be processed according to subsection (f) of this section.

(f) Requests for refund filed after the applicable refund request date.

(1) If the total amount of eligible requests for the applicable refund period received by the applicable refund request date is less than \$50 million, the comptroller will issue a warrant to each late-filed requestor whose refund claim is approved in full or in part, on a first-come-first-served basis. Requestors whose refund requests are denied, in full or in part, under this paragraph may request a hearing under subsection (e)(4) of this section.

(2) If the total amount of eligible requests for the applicable refund period received by the applicable refund request date is greater than \$50 million, the late-filed request for refund will be denied for lack of funds. Any denial under this paragraph is not eligible for a hearing under subsection (e)(4) 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.

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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



## PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

#### 34 TAC §302.5

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §302.5, regarding Correction of Errors, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1091).

Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §302.5 in order to maintain consistency with changes made to Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature. No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

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 August 11, 2014.

TRD-201403782

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (512) 936-3372



## CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §304.1

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §304.1, regarding Participation by Department, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1092).

Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §304.1 in order to maintain consistency with changes made to Title 8, Government

Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature. No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

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 August 11, 2014.

TRD-201403783

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (512) 936-3372



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

### 34 TAC §306.1

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §306.1, regarding Prior Service Credit for Members of Participating Departments, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1093).

#### Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §306.1 in order to maintain consistency with changes made to Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature. No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

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 August 11, 2014.

TRD-201403785

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

Effective date: August 31, 2014

Proposal publication date: February 21, 2014

For further information, please call: (512) 936-3372



### 34 TAC §306.2

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §306.2, regarding Merger of Existing Pension Plan into Pension System, without changes to the proposed text as published in the June 20, 2014, issue of the *Texas Register* (39 TexReg 4732).

#### Background and Summary of the Factual Basis for the Adopted Rule

The Texas Emergency Services Retirement System considers requests from existing local plans to merge into the System and conducts cost studies to ensure that an accurate review of the requesting plan's liabilities are considered prior to making a decision. As part of that process, the Trustees set the discount rate to be applied in computation of the requesting plan's present and future liabilities.

#### Discussion and Purpose of the Adopted Amendment

The System adopts amended §306.2 in order to clarify currently authorized practice by rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

The rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §862.004, which authorizes the System to adopt rules for the merger of existing pension plans into the pension system. No other statutes, articles, or codes are affected by adoption of the amendment.

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 August 11, 2014.

TRD-201403786

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

Effective date: August 31, 2014

Proposal publication date: June 20, 2014

For further information, please call: (512) 936-3372

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## CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §308.2

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §308.2, regarding Service Retirement Annuity, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1093).

#### Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §308.2 in order to maintain consistency with changes made to Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature. No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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Proposal publication date: February 21, 2014

For further information, please call: (512) 936-3372

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### 34 TAC §308.3

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §308.3, regarding Disability Retirement Benefits, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1094).

#### Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §308.3 in order to maintain consistency with changes made to Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature. No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

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 August 11, 2014.

TRD-201403776

Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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Proposal publication date: February 21, 2014

For further information, please call: (512) 936-3372

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## CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §310.4

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §310.4, regarding Standard of Conduct for Financial Advisors and Service Providers, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1095).

#### Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §310.4 in order to

maintain consistency with changes made to Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature.

No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (512) 936-3372



### 34 TAC §310.8

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §310.8, regarding Billings, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1096).

#### Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §310.8 in order to maintain consistency with changes made to Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature.

No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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### 34 TAC §310.9

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §310.9, regarding Periodic Reports and Administrative Penalties, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1097).

#### Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §310.9 in order to maintain consistency with changes made to Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature. No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Michelle Jordan

Executive Director

Texas Emergency Services Retirement System

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### 34 TAC §310.10

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts an amendment to 34 TAC §310.10, regarding Voluntary Payments by Departments, without changes to the proposed text as published in the February 21, 2014, issue of the *Texas Register* (39 TexReg 1098).

#### Background and Summary of the Factual Basis for the Adopted Rule

The amendments are made necessary by the abolition of the office of fire fighters' pension commissioner by the 83rd Legislature, Regular Session, 2013, and the transfer of the duties of the commissioner to the state board and its appointed executive director.

#### Discussion and Purpose of the Adopted Amendment

The amendment replaces each reference to the fire fighters' pension commissioner with a reference to the executive director of the System. The System adopts amended §310.10 in order to maintain consistency with changes made to Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, by the 83rd Legislature.

No changes were made to the adopted rule.

#### Public Comment

No comments were received during the comment period.

#### Statutory Authority

This rule is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to adopt rules necessary for administration of the System.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Emergency Services Retirement System

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 1. ORGANIZATION AND ADMINISTRATION

#### SUBCHAPTER C. PERSONNEL AND EMPLOYMENT POLICIES

### 37 TAC §1.41

The Texas Department of Public Safety (the department) adopts amendments to §1.41, concerning Americans with Disabilities Act Grievance Procedures. This section is adopted without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5119) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect current department policy and state and federal law. Additional nonsubstantive changes were made to update department titles.

No comments were received regarding the adoption.

This amendment is adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER D. MEDIA AND COMMUNICATIONS POLICIES

### 37 TAC §1.60

The Texas Department of Public Safety (the department) adopts the repeal of §1.60, concerning Alleged Abuse or Neglect Investigations, without changes to the proposal as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5120).

Pursuant to Government Code, §2001.039, the department reviewed this subchapter and determined the repeal of this section is necessary to delete language that is duplicative of language already contained within Texas Family Code, Chapter 261.

No comments were received regarding the adoption.

This repeal is adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins  
General Counsel  
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## SUBCHAPTER I. FEES FOR COPIES OF RECORDS

### 37 TAC §1.121

The Texas Department of Public Safety (the department) adopts the repeal of §1.121, concerning Laboratory Fees, without changes to the proposal as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5121).

Pursuant to Government Code, §2001.039, the department reviewed this section and determined the reason for initially adopting this rule no longer exists. The repeal of this section is necessary to delete obsolete language that no longer reflects current statute and practice.

No comments were received regarding the adoption.

This repeal is adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 37 TAC §1.123

The Texas Department of Public Safety (the department) adopts the repeal of §1.123, concerning Motor Carrier Lease Fees, without changes to the proposal as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5122).

Pursuant to Government Code, §2001.039, the department reviewed this section and determined the reason for initially adopting this rule no longer exists. The repeal of this section is necessary to delete obsolete language that no longer reflects current statute and practice.

No comments were received regarding the adoption.

This repeal is adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject

to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



### 37 TAC §1.124

The Texas Department of Public Safety (the department) adopts the repeal of §1.124, concerning Safety Responsibility Bureau Fees. This repeal is adopted without changes to the proposal as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5122) and will not be republished.

Pursuant to Government Code, §2001.039, the department reviewed this section and determined the reason for initially adopting this rule no longer exists. The repeal of this section is necessary to delete obsolete language that no longer reflects current statute and practice.

No comments were received regarding the adoption.

This repeal is adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department, and §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



### 37 TAC §1.131

The Texas Department of Public Safety (the department) adopts amendments to §1.131, concerning Fee for National Driver Register (NDR) Search. This amendment is adopted without changes to the proposed text as published in the July 4, 2014,



issue of the *Texas Register* (39 TexReg 5123) and will not be republished.

The public benefit statement for the preamble of this rule proposal was inaccurate. The anticipated public benefit for each year of the first five-year period this rule is in effect will be more accurate and understandable rules explaining the National Driver Register Search.

Pursuant to Government Code, §2001.039, the department reviewed this chapter and determined an update to this rule was necessary to reflect current requirements as determined by Texas Transportation Code, §521.056. This rule amendment updates and clarifies language for easier understanding and removes obsolete statutory references.

No comments were received regarding the adoption.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section; and Texas Transportation Code, §521.056, which authorizes the department by rule to establish a reasonable fee for this service.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 13. CONTROLLED SUBSTANCES SUBCHAPTER A. GENERAL PROVISIONS

### 37 TAC §13.1

The Texas Department of Public Safety (the department) adopts amendments to §13.1, concerning Definitions. This section is adopted without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5124) and will not be republished.

These amendments are intended to eliminate unnecessary rule-based definitions of terms defined elsewhere in statute. In particular, the 83rd Texas Legislature's amendments to Chapter 481 of the Health and Safety Code through Senate Bill 1643 created a statutory definition of "freestanding emergency clinic," thus rendering the rule-based definition redundant.

No comments were received regarding the proposal.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the Public Safety Commission to

adopt rules to administer and enforce Chapter 481 of the Health and Safety Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER B. REGISTRATION

### 37 TAC §13.23, §13.25

The Texas Department of Public Safety (the department) adopts amendments to §13.23 and §13.25, concerning Registration. These amendments are adopted without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5125) and will not be republished.

These amendments are intended to assist with implementation of the 83rd Texas Legislature's amendments to Chapter 481 of the Health and Safety Code through House Bill 1803, which affect the process by which physicians may renew their controlled substance registrations.

No comments were received regarding the proposal.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the Public Safety Commission to adopt rules to administer and enforce Chapter 481 of the Health and Safety Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER D. TEXAS PRESCRIPTION PROGRAM

### 37 TAC §§13.71, 13.72, 13.82

The Texas Department of Public Safety (the department) adopts amendments to §§13.71, 13.72, and 13.82, concerning Texas Prescription Program. Section 13.71 and §13.72 are adopted

without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5126) and will not be republished. Section 13.82 is adopted with changes to the proposed text and will be republished.

These amendments are intended to assist with implementation of the 83rd Texas Legislature's amendments to Chapter 481 of the Health and Safety Code through House Bill 1803, Senate Bill 406, and Senate Bill 1643. Respectively, these bills affect the process by which physicians may renew their controlled substance registrations; the delegation of prescriptive authority by physicians to advanced practice registered nurses or physician assistants; and the delegation of authority to access the DPS prescription database by practitioners or pharmacists to nurses or pharmacy technicians.

The department received comments from Ms. Mary Staples, on behalf of the National Association of Chain Drug Stores, and Mr. Doug Ream, on behalf of H-E-B Pharmacy. Both asked that the proposed number of pharmacy technicians to whom a pharmacist may delegate the authority to access the department's prescription drug database be increased from three to four. The department agrees with this suggestion and has amended the proposal accordingly.

Additional comments were made by Ms. Staples and Mr. Ream relating to the desirability of an online process for the delegation or rescission of authority to access the DPS prescription database by practitioners or pharmacists to nurses or pharmacy technicians. The department agrees that such an online process is desirable and is working to develop the necessary software interface. The rules will be amended in the future, upon development of the online process.

Mr. Ream asked that the department clarify proposed §13.82(f)'s reference to "administrative action against the registration of the delegating...pharmacist," as registrations are held by pharmacies rather than pharmacists. The department agrees that clarification is necessary and has amended the proposal to refer generally to the "responsible registrant."

Mr. Ream also asked that the department amend §13.72(a)(1) to permit advanced practice registered nurses or physician assistants to submit electronic prescriptions. The department agrees with the comment and is working to develop the necessary software interface. The rules will be amended in the future, upon development of the online process.

Both parties offered proposals relating to matters of policy or legislative action which do not relate to the rule proposals. The department will address these issues with Ms. Staples and Mr. Ream directly.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §481.003, which authorizes the Public Safety Commission to adopt rules to administer and enforce Chapter 481 of the Health and Safety Code.

*§13.82. Release of Prescription Data.*

(a) A person listed under §481.076(a)(3) of the Act must show proper need for the information when requesting the release of prescription data. The showing of proper need is ongoing. The department will require the person to periodically submit a Return of Information report documenting use of the information and the status of the investigation or prosecution giving rise to the request.

(b) A pharmacy technician, as defined by Texas Occupations Code, §551.003, acting at the direction of a pharmacist otherwise entitled to access the requested data, may be provided access if:

(1) the pharmacy technician and the delegating pharmacist are employed at the same pharmacy;

(2) the pharmacy technician requesting access is authorized to access the requested data, pursuant to the requirements of subsection (e) of this section; and

(3) the pharmacy technician requesting access provides proper identification pursuant to subsection (d) of this section.

(c) A nurse licensed under Texas Occupations Code, Chapter 301 and acting at the direction of a practitioner who is otherwise entitled to access the requested data may be provided access if:

(1) the nurse and the delegating practitioner are employed at the same medical facility;

(2) the nurse requesting access is authorized to access the requested data, pursuant to the requirements of subsection (e) of this section; and

(3) the nurse requesting access provides proper identification pursuant to subsection (d) of this section.

(d) Evidence of the nurse's or pharmacy technician's identity shall include:

(1) full name as provided on the state issued driver license;

(2) driver license number and state of issuance; and

(3) state board license number.

(e) Authorization to access prescription data on behalf of a practitioner or pharmacist must be submitted in writing to the department and must include:

(1) the name and signature of the authorized nurse or pharmacy technician; and

(2) the name, signature, and the DPS, DEA, and state board license numbers of the delegating practitioner or pharmacist.

(f) Upon termination of employment or other basis for withdrawal of authorization, the delegating practitioner or pharmacist is responsible for ensuring the department is notified of the withdrawal of authorization. Failure to maintain the accuracy of the information provided to the department under subsection (e) of this section or otherwise enabling unauthorized access to the prescription data maintained by the department under the Act may result in administrative action against the responsible registrant.

(g) A practitioner or pharmacist may authorize no more than four individuals to access the requested data. However, a practitioner may exceed this number when the requested data is required for emergency medical care. Emergency medical care is that care provided to a person who is unconscious, ill, or injured, when the reasonable apparent circumstances require prompt decisions and actions in care and when the necessity of immediate care is so reasonably apparent that any delay in the rendering of care or treatment would seriously worsen the physical condition or endanger the life of the person.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



## CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER D. DRIVER IMPROVEMENT

### 37 TAC §15.84

The Texas Department of Public Safety (the department) adopts the amendment to §15.84, concerning Hearing. This amendment is adopted without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5128) and will not be republished.

These amendments will allow hearings for non-Texas residents to be set in the county of their last known Texas residence address. Section 15.82 and §15.83 provide that upon notification of the department's determination of suspension, disqualification or revocation, a licensee may request a hearing. Section 15.84 prescribes specific procedures for a requested hearing.

No comments were received regarding the proposal.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Transportation Code, §521.005, which authorizes the department to adopt rules to administer Chapter 521 of the Transportation Code, and §521.291, which authorizes the department to adopt rules relating to license suspensions and revocations.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
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### 37 TAC §15.89

The Texas Department of Public Safety (the department) adopts amendments to §15.89, concerning Moving Violations. This amendment is adopted without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5128) and will not be republished.

These amendments are necessary to incorporate new moving violations that result in a driver being assigned points under the Driver Responsibility Program, as defined by Texas Transportation Code, §708.052. Texas Code of Criminal Procedure, §102.022 requires Texas state and local courts to assess a fine

of ten cents for any moving violation conviction as defined by Texas Transportation Code, §708.052. Section 15.89 was originally adopted June 22, 2004 to provide a definition of a moving violation. This rule also integrated a list of moving violations assigned points under the Driver Responsibility Program.

No comments were received regarding the proposal.

This amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §708.052(c), which authorizes the department to adopt rules designating offenses that constitute a moving violation of the traffic law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## PART 13. TEXAS COMMISSION ON FIRE PROTECTION

### CHAPTER 425. FIRE SERVICE INSTRUCTORS

#### 37 TAC §§425.3, 425.5, 425.7, 425.11

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 425, Fire Service Instructors, concerning §425.3, Minimum Standards for Fire Service Instructor I Certification, §425.5, Minimum Standards for Fire Service Instructor II Certification, §425.7, Minimum Standards for Fire Service Instructor III Certification, and §425.11, International Fire Service Accreditation Congress (IFSAC) Seal. The amendments are adopted without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4406) and will not be republished.

The amendments are adopted to change a referenced section in another chapter of commission rules that was amended, to clarify qualifications for Instructor II certification, and to delete obsolete language.

The adopted amendments will provide clear and concise rules for individuals who seek commission certification.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.028, which provides the commission the authority to adopt rules regarding qualifications and competencies for fire protection personnel instructors.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201403796

Tim Rutland

Executive Director

Texas Commission on Fire Protection

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Proposal publication date: June 6, 2014

For further information, please call: (512) 936-3813



## CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

### 37 TAC §429.203

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 429, Minimum Standards for Fire Inspector Certification, concerning §429.203, Minimum Standards for Fire Inspector Certification. The amendments are adopted without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4408) and will not be republished.

The amendments are adopted to add an additional path for an individual who holds certification from the State Firemen's and Fire Marshals' Association in the disciplines identified to take a commission examination to become commission certified as Basic Fire Inspector; and to also delete a reference to NFA that is now obsolete.

The adopted amendments will bridge the gap for an individual seeking to become commission certified.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201403797

Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



## CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 451, Fire Officer, concerning Subchapter C, Minimum Standards For Fire Officer III, §451.303, Minimum Standards for Fire Officer III Certification; and Subchapter D, Minimum Standards For Fire Officer IV, §451.403, Minimum Standards for Fire Officer IV Certification. The amendments are adopted without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4409) and will not be republished.

The amendments are adopted to delete obsolete language that provided a special temporary provision through February 2014 for an individual seeking Fire Officer III or Fire Officer IV certification and to allow an individual to take the commission examination without having to pay the customary testing fee.

The adopted amendments will provide a clear and concise set of rules regarding Fire Officer certification from the commission.

No comments were received from the public regarding the adoption of the amendments.

## SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

### 37 TAC §451.303

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

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 August 12, 2014.

TRD-201403798

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Effective date: September 1, 2014

Proposal publication date: June 6, 2014

For further information, please call: (512) 936-3813



## SUBCHAPTER D. MINIMUM STANDARDS FOR FIRE OFFICER IV

### 37 TAC §451.403

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

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 August 12, 2014.

TRD-201403799

Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Effective date: September 1, 2014  
Proposal publication date: June 6, 2014  
For further information, please call: (512) 936-3813



CHAPTER 453. HAZARDOUS MATERIALS  
SUBCHAPTER B. MINIMUM STANDARDS  
FOR HAZARDOUS MATERIALS INCIDENT  
COMMANDER

**37 TAC §453.203**

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 453, Hazardous Materials, concerning Subchapter B, Minimum Standards For Hazardous Materials Incident Commander, §453.203, Minimum Standards for Hazardous Materials Incident Commander. The amendments are adopted without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4411) and will not be republished.

The amendments are adopted to delete obsolete language that provided a special temporary provision through February 2014 for an individual seeking Hazardous Materials Incident Commander certification, and to allow an individual to take the commission examination without having to pay the customary testing fee.

The adopted amendments will provide a clear and concise set of rules regarding Hazardous Materials Incident Commander certification from the commission.

No comments were received from the public regarding the adoption of the amendments.

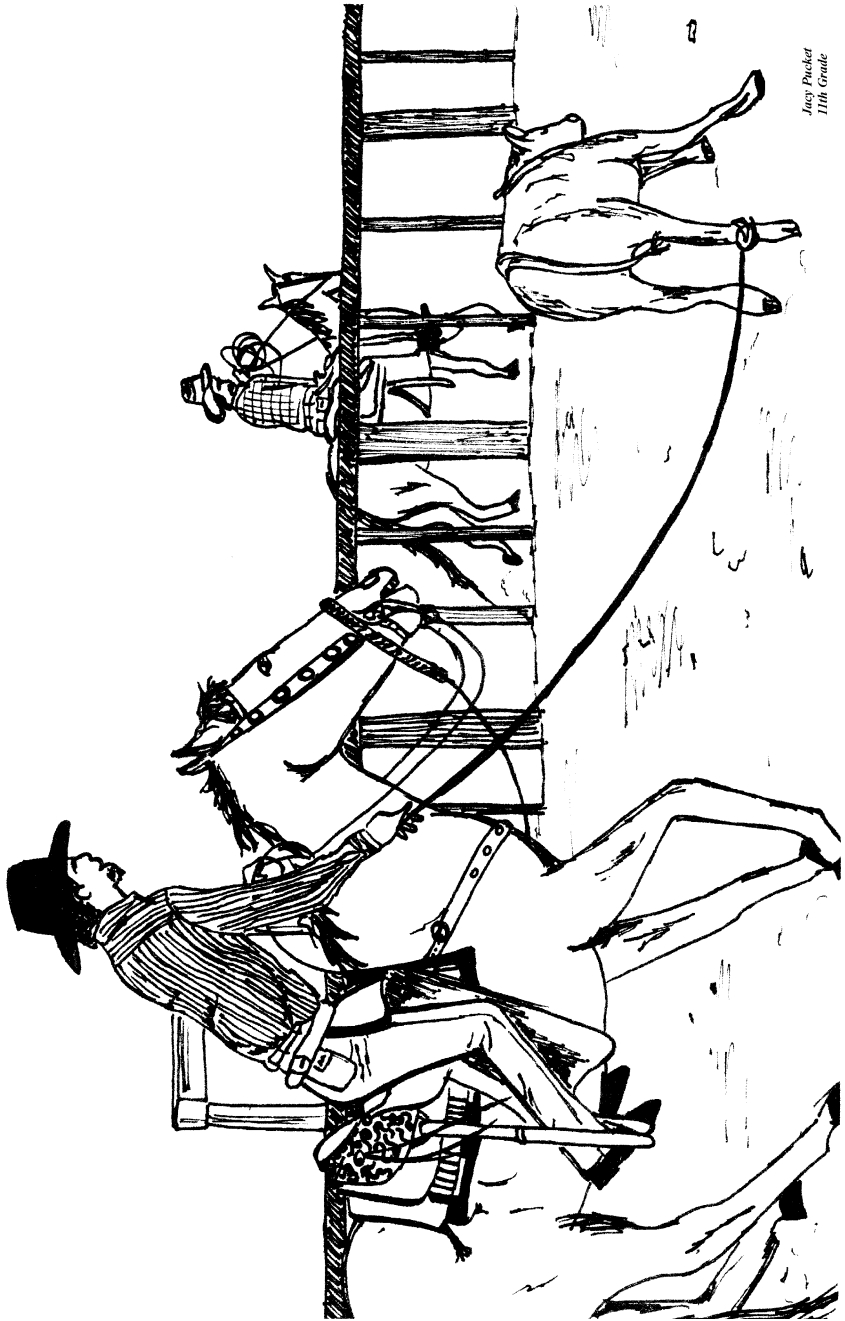
The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

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 August 12, 2014.

TRD-201403800  
Tim Rutland  
Executive Director  
Texas Commission on Fire Protection  
Effective date: September 1, 2014  
Proposal publication date: June 6, 2014  
For further information, please call: (512) 936-3813





Jacy Puckert  
11th Grade

# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Adopted Rule Reviews

Office of Consumer Credit Commissioner

### Title 7, Part 5

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders. Chapter 83, Subchapter A contains Division 1, concerning General Provisions (§83.101 and §83.102); Division 2, concerning Authorized Activities (§§83.201 - 83.205); Division 3, concerning Application Procedures (§§83.301 - 83.311); Division 4, concerning License (§§83.401 - 83.408); Division 5, concerning Interest Charges on Loans (§§83.501 - 83.505); Division 6, concerning Alternate Charges for Consumer Loans (§§83.601 - 83.606); Division 7, concerning Interest and Other Charges on Secondary Mortgage Loans (§§83.701 - 83.708); Division 8, concerning Refunds for Precomputed Loans (§§83.751 - 83.758); Division 9, concerning Insurance (§§83.801 - 83.812); Division 10, concerning Duties and Authority of Authorized Lenders (§§83.826 - 83.838); and Division 11, concerning Prohibitions on Authorized Lenders (§§83.851 - 83.862). The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Chapter 83, Subchapter A was published in the *Texas Register* as required on March 21, 2014 (39 TexReg 2147). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

As a result of internal review by the agency, the commission determined that certain revisions were appropriate and necessary. Those amendments were published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3333). Upon receipt of no written comments on the amendments, the commission adopted the amendments to 7 TAC, Chapter 83, Subchapter A, as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5142).

Subject to the adopted amendments to Chapter 83, Subchapter A, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 5, Chapter 83, Subchapter A.

TRD-201403857

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 15, 2014



Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter A, Budgeting, Accounting, Financial Reporting, and Auditing for School Districts; Subchapter B, Texas Education Agency Audit Functions; Subchapter C, Adoptions By Reference; and Subchapter D, Uniform Bank Bid or Request for Proposal and Depository Contract, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 109, Subchapters A-D, in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3735).

Relating to the review of 19 TAC Chapter 109, Subchapter A, the SBOE finds that the reasons for adopting Subchapter A continue to exist and readopts the rule. The SBOE received no comments related to the review of Subchapter A. At a later date, the SBOE may consider an amendment to Subchapter A to clarify language and terminology.

Relating to the review of 19 TAC Chapter 109, Subchapter B, the SBOE finds that the reasons for adopting Subchapter B continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter B. At a later date, the SBOE may consider amendments to Subchapter B to specify requirements for independent auditors, clarify language and terminology, and update Texas Education Code references as necessary.

Relating to the review of 19 TAC Chapter 109, Subchapter C, the SBOE finds that the reasons for adopting Subchapter C continue to exist and readopts the rule. The SBOE received no comments related to the review of Subchapter C. At a later date, the SBOE may consider an amendment to Subchapter C to clarify language and terminology.

Relating to the review of 19 TAC Chapter 109, Subchapter D, the SBOE finds that the reasons for adopting Subchapter D continue to exist and readopts the rules. The SBOE received no comments related to the review of Subchapter D. No changes are necessary as a result of the review.

TRD-201403962

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 20, 2014



The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability; Subchapter BB, Commissioner's Rules Concerning Financial Exigency;

and Subchapter CC, Commissioner's Rules Concerning Federal Fiscal Compliance and Reporting, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 109, Subchapters AA-CC, in the May 9, 2014, issue of the *Texas Register* (39 TexReg 3735).

Relating to the review of 19 TAC Chapter 109, Subchapter AA, the TEA finds that the reasons for adopting §§109.1002, 109.1003, 109.1004, and 109.1005 continue to exist and readopts the rules. The TEA finds that the reasons do not exist for adopting §109.1001, Purpose of Financial Accountability Rating System, or §109.1101, Financial Solvency Review. Section 109.1001 is unnecessary as it does not provide school districts with a practical rule or regulation, and the authorizing statute for §109.1101 will be repealed effective September 1, 2014. At a later date, the TEA plans to repeal §109.1001 and §109.1101. The TEA also plans to repeal §109.1003 and §109.1004, and relevant provisions from those sections will be clarified and incorporated into existing §109.1002 to create one consolidated financial accountability rating rule. In addition, the TEA plans to propose amendments to §109.1002 to align with changes made by House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013, and remove expired provisions and to §109.1005 to delete a requirement related to a statute that will be repealed effective September 1, 2014.

Relating to the review of 19 TAC Chapter 109, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rule. At a later date, the TEA plans to propose an amendment to rewrite the rule in plain language.

The TEA received comments related to the review of Subchapters AA and BB. Following is a summary of the public comments received and the corresponding responses.

Comment: The Texas Charter Schools Association (TCSA) commented that, in developing new indicators for the financial accountability rating system established in 19 TAC Chapter 109, as required by HB 5, 83rd Texas Legislature, Regular Session, 2013, the TEA should ensure that the indicators that apply to open-enrollment charter schools are specific to charter schools and reflect charter schools' unique circumstances and challenges as compared to those of school districts. The TCSA stated that these unique circumstances and challenges include (1) that charter schools are typically created by start-up organizations without accumulated assets, (2) that charter schools often must rely solely on their monthly state aid payments for financing, (3) that charter schools are typically small organizations with student enrollment of less than 1,600, and (4) that charter schools "are each founded with a distinct innovative educational model that has been accepted by the State of Texas." As part of its comment, and in response to a survey that the TEA made available on its website, the TCSA recommended specific ideal indicators to include in the revised financial accountability rating system required by HB 5.

The TCSA recommended the following indicators to identify whether a charter school's finances are well managed: the charter holder has at least 30 days' worth of cash on hand, including lines of credit; the charter holder has positive net assets; the charter holder has an unqualified opinion from its independent auditor; and the charter school's independent auditor finds no material weaknesses in the school's internal controls.

The TCSA also recommended the following indicators to identify whether a charter school is financially solvent: the charter school has a positive cash flow; the charter school has sufficient insurance to cover a catastrophic event; and the charter school has a stable enrollment history.

In addition, the TCSA recommended an indicator requiring a charter school to have a debt service coverage ratio of at least 1.1.

The TCSA further commented that any indicators should take into account a charter school's mission and education plan as stated in the charter contract, particularly if the mission or plan was likely to impact the charter school's finances. The TCSA also commented that the TEA should adopt modified indicators for charter schools in a fast-growth or start-up phase.

Agency Response: The agency agrees that it is important to carefully consider the indicators that will be used to evaluate charter schools' finances and financial management in the revised financial accountability rating system. The agency also agrees that the unique circumstances of charter schools should be taken into account in developing these financial accountability indicators.

Comment: The TCSA commented that if the TEA keeps any of the existing financial accountability indicators for charter schools, the TEA should modify certain of those indicators as follows.

Existing Indicator 2: The TCSA commented that this indicator, which evaluates net asset balance, should be modified for new charter schools. Also, the TCSA commented that the existing indicator's exemption for schools with a five-year percent increase in student membership of 10% or more should be modified to lower the specified percent increase.

Existing Indicator 3: The TCSA commented that this indicator, which deals with default on debt, should be modified to define "default on debt." The TCSA stated that the definition should exclude certain specific circumstances, such as waiver of a bond covenant.

Existing Indicator 5: This indicator asks whether a charter school's annual financial and compliance report included an unqualified opinion from the independent auditor. The TCSA commented that the agency should create an appeals process for a school that does not receive points for this indicator as a result of a mistake by the school's independent auditor.

Existing Indicator 7: The TCSA commented that this indicator, which compares a charter school's liabilities to its assets, is redundant as it is very similar to Indicator 2. The TCSA stated that the indicator should refer to the charter holder rather than the charter school and that it should be modified or not applied for new and fast-growth charter schools. The TCSA also commented that the indicator should count cash on hand as assets. In addition, the TCSA commented that evaluating a charter school's statement of cash flows would be a better measure of fiscal responsibility.

Existing Indicator 9: This indicator evaluates whether a charter school's debt-related expenses were less than a certain threshold amount per student. The TCSA commented that it would be better to evaluate a charter school's debt by looking at the school's debt service coverage ratio. The TCSA also commented that the existing indicator does not take into account that charter schools do not have interest and sinking fund revenue to use in paying for facilities.

Existing Indicator 11: The TCSA commented that this indicator, which asks whether a charter school had a monitor, conservator, manager, or board of managers assigned for financial management reasons, should specify which time period it applies to. The TCSA commented that the indicator should be changed from a pass-fail indicator to one for which a range of points is available. The TCSA further commented that the TEA should consider revising the indicator to refer to only a conservator, manager, or board of managers.

Existing Indicator 12: The TCSA commented that this indicator, which compares a charter school's budgeted expenses to its budgeted revenues, cash, and investments, should be modified to include "donation receivables" in its calculation. The TCSA commented that the existing indicator conflicts with the requirements of Statement of Financial Accounting Standards 116.



Existing Indicator 12: The TCSA commented that this indicator, which compares a charter school's budgeted expenses to its budgeted revenues, cash, and investments, should be modified to include "donation receivables" in its calculation. The TCSA commented that the existing indicator conflicts with the requirements of Statement of Financial Accounting Standards 116.

Existing Indicator 13: The TCSA commented that this indicator, which evaluates the current assets in all net asset groups as compared to the current liabilities in all net asset groups, should be modified or not applied for new charter schools.

Existing Indicator 14: This indicator evaluates whether a charter school's administrative cost ratio was less than a threshold ratio. The TCSA commented that because about 100 charter schools have failed this indicator annually since its inception, the TEA should reconsider whether the indicator effectively evaluates charter schools' spending for school administration. The TCSA commented that the TEA should modify this indicator to reflect charter schools' unique circumstances as compared to those of school districts.

Existing Indicators 15 and 16: These indicators evaluate the ratio of students in membership to, respectively, teachers and total staff members. The TCSA commented that the TEA should allow for end-of-year submissions of teacher and staff-member counts so that the ratios evaluated are as accurate as possible. The TCSA also commented that the school size ranges used for this indicator should be based on the ratios specified in a charter school's contract or, if the TEA wishes to use standardized size ranges, on historic trends for charter schools.

Existing Indicator 17: The TCSA commented that this indicator, which evaluates a charter school's decrease in total net assets, should be modified to include "donation receivables" in its calculation. The TCSA commented that the existing indicator conflicts with the requirements of Statement of Financial Accounting Standards 116.

Existing Indicator 19: The TCSA commented that charter schools' high rate of failing this indicator, which asks whether a charter school's investment earnings met or exceeded the three-month Treasury bill rate, shows that this indicator is not a reasonable one for measuring charter schools' financial health. The TCSA commented that because of the nature of the charter school finance system, charter schools experience such large swings in cash flow that "it is often imprudent . . . to set aside any amount of funding" for investments. The TCSA also commented that, in determining a charter school's available investment income using the school's end-of-fiscal-year fund balance, the indicator is using an inflated cash balance that "masks the limited opportunities charter schools have for investing throughout the year."

Agency Response: The agency agrees that if it considers keeping any of the existing indicators as part of the revised financial accountability rating system, the effectiveness of those indicators must be carefully evaluated.

Comment: With regard to existing Indicator 11, the TCSA commented that because assignment of a monitor, conservator, manager, or board of managers is triggered at the TEA's discretion, the agency should add to its rules a process for engaging and dismissing the monitor, conservator, manager, or board of managers.

Agency Response: This comment is outside the scope of this rule review. The assignment and dismissal of monitors, conservators, managers, or board of managers is addressed in 19 TAC §97.1073.

Comment: With regard to existing Indicators 15 and 16, the TCSA commented that the TEA should provide guidance to charter schools on how to account for teachers and staff members that are paid from a source other than state aid.

Agency Response: This comment is outside the scope of this rule review. The coding of expenditures for teachers and staff members is addressed in State Board of Education rule in 19 TAC §109.41.

Relating to the review of 19 TAC Chapter 109, Subchapter CC, the TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter CC. No changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 109.

TRD-201403963  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Filed: August 20, 2014



## Employees Retirement System of Texas

### Title 34, Part 4

Pursuant to the notice of the proposed rule review that was published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3423), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 71, Creditable Service, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 71 continue to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 71 continues to exist, and therefore, the Board readopts Chapter 71 with amendments as published in the April 11, 2014 issue of the *Texas Register* (39 TexReg 2809) and adopted by the Board at its May 20, 2014 and August 19, 2014 meetings. This completes ERS' review of 34 TAC Chapter 71, Creditable Service.

TRD-201403934  
Paula A. Jones  
General Counsel and Chief Compliance Officer  
Employees Retirement System of Texas  
Filed: August 19, 2014



Pursuant to the notice of the proposed rule review published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 1005), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 74, Qualified Domestic Relations Orders, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 74 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 74 continues to exist, and therefore, the Board readopts Chapter 74. This completes ERS' review of 34 TAC Chapter 74, Qualified Domestic Relations Orders.

TRD-201403936  
Paula A. Jones  
General Counsel and Chief Compliance Officer  
Employees Retirement System of Texas  
Filed: August 19, 2014



Pursuant to the notice of the proposed rule review published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 1005), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 82, Health Services in State Office Complexes, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 82 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 82 continues to exist, and therefore, the Board readopts Chapter 82. This completes ERS' review of 34 TAC Chapter 82, Health Services in State Office Complexes.

TRD-201403937

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: August 19, 2014



Texas Department of Public Safety

**Title 37, Part 1**

The Texas Department of Public Safety (the department) has completed its review of 37 TAC Chapter 18, concerning Driver Education. Texas Government Code, §2001.039 requires agencies to review and consider for readoption each of their rules every four years. The review assesses whether the original reasons for adopting the rules continue to exist. The department reviewed Chapter 18 and determined that the original justification for these rules continues to exist.

Notice of Intent to Review was published in the March 15, 2013, issue of the *Texas Register* (38 TexReg 1881). No comments were received in response to the proposed rule review.

As a result of the review, the department published the proposed repeal and new chapter in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1685). The new Chapter 18 reflected current requirements as determined by Texas Transportation Code, §§521.1655, 521.205, and 545.424, and Texas Education Code, Chapter 1001. The department approves parent taught driver education courses and new language was necessary to update the rules to reflect legislative changes relating to parent taught driver education providers and instructors and general driver education requirements.

The department accepted and received comments on the proposed changes. The Public Safety Commission adopted the repeal and new chapter and the adoption notice with department response to comments was published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5192).

This concludes the department's review of 37 TAC Chapter 18.

TRD-201403911

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Filed: August 18, 2014



# TABLES & GRAPHICS


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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure 1: 16 TAC Chapter 3 - Preamble



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## Earthquake Archive Search & URL Builder

Search results are limited to 20,000 events.

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### Basic Search Options

**DATE & TIME**

Start (UTC)  End (UTC)

---

**MAGNITUDE**

Minimum  Maximum

---

**GEOGRAPHIC REGION**

Currently searching custom region [Clear Region](#)

**Rectangle**

Decimal degree coordinates. North must be greater than South. East must be greater than West.

North

West
East

South

**Circle**

Center Latitude  Center Longitude

Inside Radius (km)  Outside Radius (km)

### Advanced Search Options

**DEPTH (KM)**

Minimum  Maximum

---

**AZIMUTHAL GAP**

Minimum  Maximum

---

**REVIEW STATUS**

Any

Automatic

Reviewed

---

**EVENT TYPE**

**IMPACT** (PAGER, SHAKEMAP, DYFI)

---

**CATALOG**

---

**CONTRIBUTOR**

---

**PRODUCT TYPE**

### Output Options

**FORMAT**

Map & List

CSV

KML

QuakeML

GeoJSON

**ORDER BY**

Time - Newest First

Time - Oldest First

Magnitude - Largest First

Magnitude - Smallest First

**LIMIT RESULTS**

Number of Events  Offset

Output Format: Map & List

Figure 2: 16 TAC Chapter 3 - Preamble

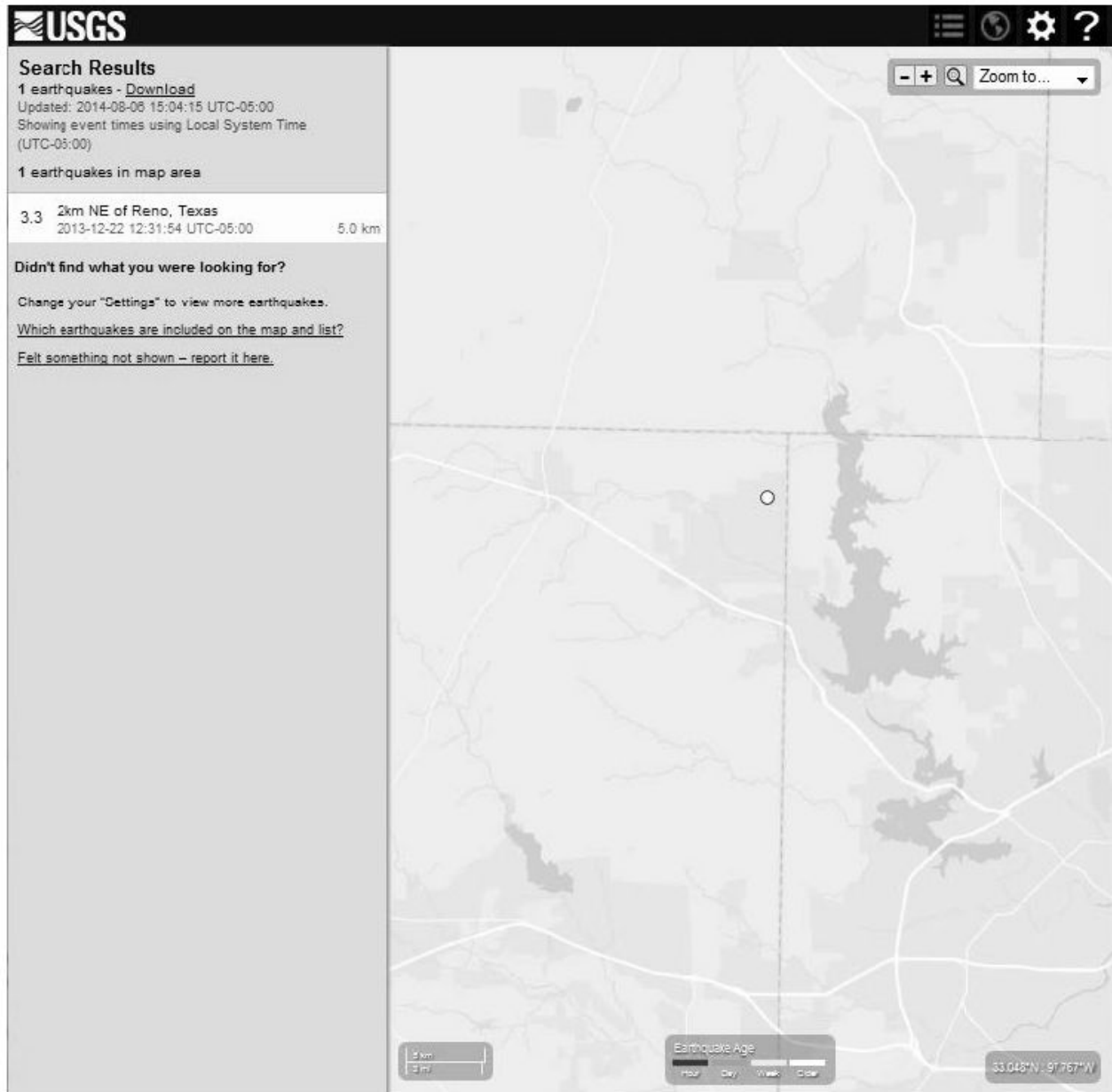


Figure: 16 TAC §401.323(d)(3)(A)

**Winning Play Odds and Prize Funding**

Prize Level	Matches First Set	Matches Second Set	Prize	Odds (1 in)	% Sales*	% Prize Pool
1	5	1	Top Prize	72,770,880.0000 for Top Prizes	32.2148% **	64.4296% *
2	5	0	\$100,000	2,695,217.7778	0.7421%	1.4841%
3	4	1	\$20,000	309,663.3191	1.2917%	2.5835%
4	4	0	\$500	11,469.0118	0.8719%	1.7438%
5	3	1	\$250	6,731.8113	0.7427%	1.4855%
6	2	1	\$25	448.7874	1.1141%	2.2282%
7	3	0	\$20	249.3263	1.6043%	3.2087%
8	1	1	\$10	81.5977	2.4511%	4.9021%
9	0	1	\$7	47.4405	2.9511%	5.9021%
10	2	0	\$5	16.6218	6.0162%	12.0324%
11	Millionaires' Club Prize		\$1 Million	Varies with Sales	Combined with Top Prize %*	Combined with Top Prize %%

\* Includes prize reserve and other deductions

\*\* The Level 1 Top Prize and Level 11 Millionaires' Club Prize Pool contributions are combined.

Overall win probability is 1 in 10.0025

Total	50.000%	100.0000%
-------	---------	-----------

Top Prize & Millionaires' Club Prizes	32.2148%	64.4296%
---------------------------------------	----------	----------

Figure: 16 TAC §401.323(i)(4)

MONOPOLY Property Groups	No. of Entries Awarded
Mediterranean Avenue & Baltic Avenue	2
Oriental Avenue & Vermont Avenue & Connecticut Avenue	4
St. Charles Place & States Avenue & Virginia Avenue	6
St. James Place & Tennessee Avenue & New York Avenue	8
Kentucky Avenue & Indiana Avenue & Illinois Avenue	10
Atlantic Avenue & Ventnor Avenue & Marvin Gardens	12
Pacific Avenue & North Carolina Avenue & Pennsylvania Avenue	15
Park Place & Boardwalk	20
Reading RR & Pennsylvania RR & B&O RR & Short Line RR	16
Electric Company & Water Works	10



# TEXAS VETERANS COMMISSION "TAPS CERTIFICATION"

TVCTAPS  
Rev. Aug 2014  
Page 1 of 1

Texas Government Code, §434.0072(b) states, in pertinent part: "The commission shall establish a program to issue vouchers to be exchanged for an exemption from the payment of tuition and required fees at an institution of higher education as provided by §54.344, Education Code, to students in grades 6 through 12 or at postsecondary educational institutions who sound "Taps" on a bugle, trumpet, or cornet during military honors funerals held in this state for deceased veterans. A voucher must be issued in the amount of \$25 for each time a student sounds "Taps" as described by this subsection ..."

**SECTION I:**

As outlined above, the student identified below: (To be completed by student.)

\*\*\*\*\*PLEASE PRINT CLEARLY. THE VOUCHER WILL BE MAILED TO THIS ADDRESS\*\*\*\*\*

Student Name: \_\_\_\_\_

Student Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Student/Parent Phone No: \_\_\_\_\_

Name of School: \_\_\_\_\_

School Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Signature of Student: \_\_\_\_\_

Signature of Parent/Guardian: \_\_\_\_\_ Date: \_\_\_\_\_  
 (If Student under 18)

**SECTION II:**

Provided the services of sounding "Taps" for the military funeral of: (To be completed by funeral home or designee)

Veteran's Name: \_\_\_\_\_

Date of Funeral Service: \_\_\_\_\_

Place of Funeral Service: \_\_\_\_\_

Funeral Home Name: \_\_\_\_\_

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Funeral Director License No.: \_\_\_\_\_

**I HEREBY CERTIFY THAT THE ABOVE NAMED STUDENT SOUNDED TAPS AT THIS SERVICE AND THAT THIS DOCUMENT IS TRUE AND CORRECT.**

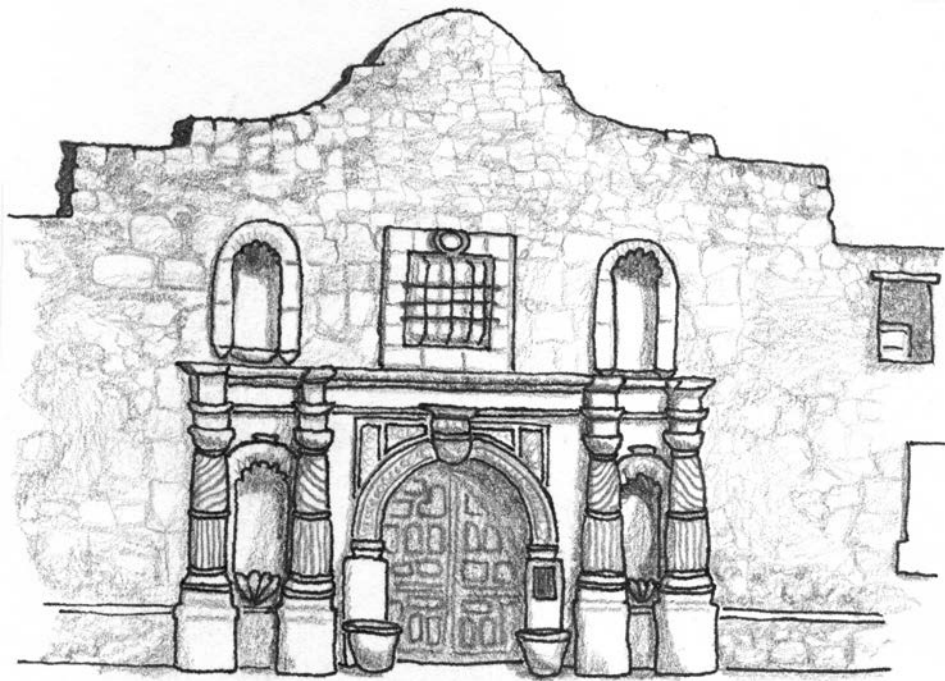
Printed Name of Funeral Director or Designee: \_\_\_\_\_

Signature of Funeral Director or Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Funeral Director or Designee Phone Number: \_\_\_\_\_

\*\*\*\*\*  
 PLEASE RETURN THIS FORM TO THE TEXAS VETERANS COMMISSION, P.O. BOX 12277, AUSTIN, TX 78711-2277.  
 A voucher in the amount of \$25 for use in the payment of tuition and/or required fees at an institution of higher education will be issued to the above named student upon receipt of this completed document and verification that this service was provided.

TEXAS VETERANS COMMISSION  
 Phone: 512/463-6564 | Fax: 512/475-2395 | E-Mail: info@tvc.texas.gov | Web: www.tvc.texas.gov  
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# 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.

## Department of Aging and Disability Services

### Request to Report Adoption of Boarding Home Model Standards

#### Background

H.B. 216, 81st Legislature, Regular Session, 2009, amended the Texas Health and Safety Code by adding Chapter 254 governing boarding home facilities, re-designated as Chapter 260, effective September 1, 2011. Section 260.004 provides that, "A county or municipality may require a person to obtain a permit from the county or municipality to operate a boarding home facility within the county's or municipality's jurisdiction. A county or municipality may adopt the standards developed by the executive commissioner under Section 260.003 and require a boarding home facility that holds a permit issued by the county or municipality to comply with the adopted standards." A link to the standards published in the Texas Register can be found here: <http://texinfo.library.unt.edu/texasregister/html/2010/aug-27/in-addition/in-addition.html#343>.

#### Required Information

To date, the Texas Department of Aging and Disability Services (DADS) has been informed of four municipalities that have adopted boarding home model standards: Brenham, Dallas, El Paso, and San Antonio. If your county or municipality has chosen to adopt the standards developed by the Health and Human Services Commission (HHSC), then, as provided by Section 260.010(a), not later than September 30th of each year, the county or municipality must submit a report to DADS that includes:

- the total number of boarding home facilities permitted during the preceding state fiscal year;
- the number of active permits;
- the total number of residents in each boarding home facility; and
- the total number of inspections conducted of boarding home facilities.

DADS is required under Section 260.010(b) to compile and maintain any reports submitted by a county or municipality and to report that information to the Legislature not later than January 1st of each odd-numbered year.

Please submit your report or questions to [boardinghome@dads.state.tx.us](mailto:boardinghome@dads.state.tx.us) by **September 30, 2014**. Your timely cooperation in this matter is greatly appreciated.

TRD-201403956

Lawrence T. Hornsby

General Counsel

Department of Aging and Disability Services

Filed: August 20, 2014



## Brazos Valley Council of Governments

### Notice of Release of Request for Quotes for Hearing Officer Services

Workforce Solutions Brazos Valley Board is requesting quotes for Hearing Officer Services.

The Workforce Solutions Brazos Valley Board (WSBVB) is a volunteer body instituted in accordance with the Texas Workforce Act (HB 1863 and SB 642). The primary responsibility of the WSBVB is to provide policy and program guidance, to plan regionally for Workforce programs, and to exercise independent oversight of local workforce activities, in partnership with local government.

WSBVB is seeking a contractor to provide hearing officer services for the WSBVB area. Hearing Officer will perform arbitration services for the Brazos Valley Council of Governments (BVCOG), WSBVB and the WSBVB Workforce Center system in the seven-county Brazos Valley Region. These counties include: Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington. This process must adhere to all Federal, State, Texas Workforce Commission, WSBVB and BVCOG laws, rules, policies, and guidelines.

This request for quotes (RFQ) will be released on August 18, 2014. A copy of the quote can be downloaded at [www.bvjobs.org](http://www.bvjobs.org) under Workforce Board - Procurements or by contacting:

Jessica Lockhart

Workforce Solutions Brazos Valley Board

P.O. Drawer 4128

Bryan, TX 77805

(979) 595-2800

[jessica.lockhart@bvcog.org](mailto:jessica.lockhart@bvcog.org)

**Quotes must be received no later than September 15, 2014 by 4:00 p.m.** Quotes may be submitted by mail to the above address. Quotes received after the due date and time will not be considered. Hand delivered quotes may be submitted at the Board Administrative Office, 3991 East 29th Street, Bryan, Texas 77802, ATTN: Hearing Officer Services RFQ. Please note no mail is delivered to this address. Mailed submissions must be sent to the P.O. Box noted above.

A bidders conference call will be held on September 4, 2014 at 10:00 a.m. Interested parties should contact Jessica Lockhart, Board Staff at (979) 595-2800 no later than September 3, 2014 to obtain the phone number and access code for the conference call. Written questions may be emailed to Jessica Lockhart at [jessica.lockhart@bvcog.org](mailto:jessica.lockhart@bvcog.org), prior to the conference call. A question/answer document will be posted on the Board's web page several days after the conference call. There will be no other opportunities to ask questions concerning this procurement.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas (800) 735-2989, TDD (800) 735-2988 Voice, TTY (979) 595-2819.

TRD-201403832

Shawna Rendon

Program Administrator

Brazos Valley Council of Governments

Filed: August 13, 2014

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## Comptroller of Public Accounts

### Notice of Contract Award

The Texas Comptroller of Public Accounts announces this notice of award for Domestic Core Fixed Income Management Services for the Texas Prepaid Higher Education Tuition Board under Request for Proposals 207d (RFP). The RFP was published in the February 14, 2014 issue of the *Texas Register* (39 TexReg 1018).

The contract was awarded to Advantus Capital Management, Inc., 400 Robert Street North, St. Paul, Minnesota 55101. The compensation for the contract is in the form of a fee set forth in the fee schedule on Attachment C of the contract. The term of the contract is August 14, 2014 through August 31, 2019, with option to renew for up to two (2) additional one (1) year periods, one (1) year at a time.

TRD-201403930

Jette Withers

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: August 18, 2014

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/25/14 - 08/31/14 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 08/25/14 - 08/31/14 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/14 - 09/30/14 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/14 - 09/30/14 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201403940

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 19, 2014

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## Credit Union Department

### Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from City Credit Union (Dallas) seeking approval to merge with CICOST Federal Credit Union (Sherman), with City Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the

date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201403951

Harold E. Feeney

Commissioner

Credit Union Department

Filed: August 20, 2014

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## Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from InvesTex Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a 10-mile radius of the InvesTex Credit Union Offices located at: Main office - 905 Aldine Bender Road, Houston, Texas 77032; Cypresswood Branch - 230 Cypresswood, Spring, Texas 77388; Atascocita Branch - 5212 Atascocita Rd., Humble, Texas 77346; Tomball Parkway Branch - 24922 Tomball Parkway, Suite 100, Tomball, Texas 77375; North Loop West Branch - 1614 North Durham, Houston, Texas 77008; to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in and businesses and other legal entities located within a 10-mile radius of the branch office located at 1777 Gears Rd., Houston, Texas 77067, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201403952

Harold E. Feeney

Commissioner

Credit Union Department

Filed: August 20, 2014

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## Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Associated Credit Union of Texas, League City, Texas (#1) - See *Texas Register* issue dated May 30, 2014.

Associated Credit Union of Texas, League City, Texas (#2) - See *Texas Register* issue dated May 30, 2014.

Application for a Merger or Consolidation - Withdrawn

TCC Credit Union (Dallas) and Mobility Credit Union (Irving) - See *Texas Register* issue dated June 27, 2014.

Articles of Incorporation - 50 Years to Perpetuity - Approved

WesTex Community Credit Union, Kermit, Texas.

TRD-201403953

Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: August 20, 2014



## East Texas Council of Governments

### Request for Proposals

The East Texas Council of Governments (ETCOG) on behalf of Workforce Solutions of East Texas Board (WSETB) is issuing this Request for Proposal (RFP) to allow for the selection of a credentialed Information and Communications Technology (ICT) organization to provide strategic consultation services and service management support for WSETB ICT systems.

Please contact Purchasing Manager, Trish Hudspeth, (903) 218-6410. Proposers may access the RFP at [http://www.etcog.org/650/Workforce\\_Solutions\\_East\\_Texas\\_ICT\\_.htm](http://www.etcog.org/650/Workforce_Solutions_East_Texas_ICT_.htm).

TRD-201403894

David Cleveland  
Communications Manager  
East Texas Council of Governments  
Filed: August 18, 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 **September 29, 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. September 29, 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: BELTRAN's PRINTING, INCORPORATED; DOCKET NUMBER: 2012-1049-IWD-E; IDENTIFIER: RN105417661; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: printing; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain the No Exposure Certification for exclusion from the requirements of Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2543; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(2) COMPANY: Block House Municipal Utility District; DOCKET NUMBER: 2014-0766-WQ-E; IDENTIFIER: RN100976885; LOCATION: Leander, Williamson County; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 12100 Park 35 Circle, Bldg. A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: C-Store Trands Incorporated dba Jrs Food Mart; DOCKET NUMBER: 2014-0719-PST-E; IDENTIFIER: RN102713161; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$1,913; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: CASH REGISTER SERVICES, INCORPORATED; DOCKET NUMBER: 2014-0625-PWS-E; IDENTIFIER: RN106182207; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and §290.122(b)(2)(B) and (f) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 4 milligrams per liter (mg/L) for fluoride based on a running annual average for the third and fourth quarters of 2013 and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for fluoride for the third quarter of 2013; and 30 TAC §290.106(f)(3) and THSC, §341.0315(c), by failing to comply with the MCL of 0.010 mg/L for arsenic based on a running annual average; PENALTY: \$335; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(5) COMPANY: Centerville Petroleum, LLC, dba Yellow Rose Travel Plaza; DOCKET NUMBER: 2014-0721-MLM-E; IDENTIFIER: RN105665822; LOCATION: Normangee, Leon County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §305.42(a) and §290.42(i) and TWC, §26.121(a), by failing

to obtain authorization from the commission prior to any discharge of wastewater; 30 TAC §290.45(d)(2)(B)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide at least two service pumps with a total capacity of three times the Maximum Daily Demand (MDD) if the MDD is 15 gallons per minute or more; 30 TAC §290.45(d)(2)(B)(ii) and THSC, §341.0315(c), by failing to provide a ground storage capacity which is equal to 50% of the MDD; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence around the well unit that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's well; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(w), by failing to maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately following certain events if the event may negatively impact the production or delivery of safe and adequate drinking water; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: \$4,668; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Century Corrosion Technologies, LLC; DOCKET NUMBER: 2014-0741-AIR-E; IDENTIFIER: RN100902048; LOCATION: Houston, Harris County; TYPE OF FACILITY: surface treatment and coating plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3375, General Terms and Conditions (GTC), by failing to submit a permit compliance certification within 30 days after the end of the certification period; and 30 TAC §101.20(2) and §122.143(4), 40 Code of Federal Regulations §63.3920(a)(1), THSC, §382.085(b), and FOP Number O3375, GTC, by failing to submit a semi-annual compliance report within 30 days after the end of the semi-annual reporting period; PENALTY: \$5,926; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2014-0733-AIR-E; IDENTIFIER: RN106120413; LOCATION: Garden City, Glasscock County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and §116.615(2), Texas Health and Safety Code (THSC), §382.085(b), and Standard Permit Registration Number 95802, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an initial notification for Incident Number 189899 within 24 hours of the discovery of the emissions event; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(8) COMPANY: DHANANI RETAIL, INCORPORATED dba Lockwood Fuel Stop; DOCKET NUMBER: 2013-1174-PST-E; IDENTIFIER: RN103786521; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,075; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Donald R. Cole dba Harmony Water System; DOCKET NUMBER: 2014-0219-PWS-E; IDENTIFIER: RN105197024; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.117(c)(2) and (i)(1) and §290.122(c)(2)(A), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory and provide the results to the executive director, and failed to provide public notification regarding the failure to collect lead and copper tap samples; 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of triennial metals, minerals, synthetic organic chemical (SOC) contaminants Group 5, SOC contaminants and volatile organic chemical contaminants sampling to the executive director; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91840166 for Fiscal Years 2012 - 2014; PENALTY: \$2,629; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: East Central Special Utility District; DOCKET NUMBER: 2014-0420-PWS-E; IDENTIFIER: RN102676194; LOCATION: Adkins, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.109(c)(4)(C), by failing to notify the wholesale system within 24 hours of being notified of a total coliform-positive distribution sample; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the TCEQ by July 1st 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 §290.272(a)(1), (b)(1)(D), (d)(3) and (e), by failing to meet the adequacy, availability, and/or content requirements for the CCR for the year of 2012; PENALTY: \$4,370; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: EMIL B. CORPORATION dba Valley Ranch Cleaners; DOCKET NUMBER: 2014-0745-DCL-E; IDENTIFIER: RN102918414; LOCATION: Irving, Dallas County; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning facility and/or dry cleaning drop station; PENALTY: \$399; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Gerard Ortiz and Colleen Ortiz dba River Oaks Water System; DOCKET NUMBER: 2014-0461-PWS-E; IDENTIFIER: RN101189348; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC

§290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to timely submit to the TCEQ by July 1st 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 §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A), by failing to timely 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 timely provide public notification regarding the failure to submit DLQORs; PENALTY: \$550; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 12100 Park 35 Circle, Bldg. A, Austin, Texas 78753, (512) 339-2929.

(13) COMPANY: Gulf Coast Waste Disposal Authority; DOCKET NUMBER: 2013-1982-AIR-E; IDENTIFIER: RN100219500; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O1710, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a semi-annual deviation report within 30 days after the end of the reporting period; PENALTY: \$2,075; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Hasmukh D. Bhakta dba Fort Hancock Mini Mart; DOCKET NUMBER: 2014-0143-PST-E; IDENTIFIER: RN101444008; LOCATION: Fort Hancock, Hudspeth County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C), §334.54(c)(1), and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.602(a), by failing to identify and designate for the underground storage tank facility at least one named individual for each class of operator - Class A, Class B, and Class C; PENALTY: \$8,100; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(15) COMPANY: Hendrik Post and Hendrik Post, Jr.; DOCKET NUMBER: 2014-0274-AIR-E; IDENTIFIER: RN103777298; LOCATION: Mount Vernon, Franklin County; TYPE OF FACILITY: farm; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Javier Gonzales, Jr.; DOCKET NUMBER: 2014-1115-WOC-E; IDENTIFIER: RN104866173; LOCATION: Sebastian, Cameron County; TYPE OF FACILITY: wastewater; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license (water); PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Jeremy S. Langley; DOCKET NUMBER: 2014-1116-WOC-E; IDENTIFIER: RN105216493; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license (public water supply); PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512)

239-2608; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Knife River Corporation - South; DOCKET NUMBER: 2014-0798-WQ-E; IDENTIFIER: RN107237059; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: concrete batch plants; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to water in the state; PENALTY: \$938; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Molinos Anahuac, Incorporated; DOCKET NUMBER: 2014-0175-IWD-E; IDENTIFIER: RN105452072; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: wet corn milling facility authorized to utilize reclaimed water; RULES VIOLATED: 30 TAC §210.25(b), by failing to provide warning signs or secure the area to prevent access by the public to the area where reclaimed water is stored; 30 TAC §210.25(g), by failing to provide purple piping for all exposed piping conveying industrial reuse water by either manufactured purple pipe, purple paint, purple metallic tape, or bagged in purple and failed to label exposed piping with a warning stenciled in white reading NON-POTABLE WATER; 30 TAC §210.23(d) and TCEQ Authorization for Industrial Reclaimed Water Use Number 2E-0000111, Additional Requirements Number 9, by failing to ensure all initial holding ponds designed to contain Type I effluent conform to the storage requirements for reclaimed water; 30 TAC §210.24(d)(2), by failing to maintain the land application area with a vegetative cover or have the irrigation site under cultivation while irrigating with reclaimed industrial wastewater; 30 TAC §210.33(2)(B) and TWC, §26.121(a)(1), by failing to transfer reclaimed water meeting the quality limits described for use in a pond system; 30 TAC §210.57(b)(1)(A) and TCEQ Authorization for Industrial Reclaimed Water Use Number 2E-0000111, Quality Criteria and Additional Requirements Number 1, by failing to sample effluent quality prior to routing for irrigation; 30 TAC §210.22(e) and TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial reclaimed wastewater into or adjacent to water in the state; 30 TAC §210.22(e), by failing to notify the TCEQ of an unauthorized discharge into or adjacent to water in the state in writing within five working days of becoming aware of the discharge; 30 TAC §210.57(b)(2)(C) and TCEQ Authorization for Industrial Reclaimed Water Use Number 2E-0000111, Additional Requirements Number 5, by failing to maintain an operating log which records irrigation activities and be readily available for inspection by the executive director for a minimum period of five years; and 30 TAC §210.56(f)(4) and TCEQ Authorization for Industrial Reclaimed Water Use Number 2E-0000111, Additional Requirements Number 6, by failing to maintain the buffer zone requirement of 250 feet from private water wells when applying industrial reclaimed water to land; PENALTY: \$29,967; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(20) COMPANY: Mukhtar, Incorporated dba Circle A Food Store; DOCKET NUMBER: 2014-0567-PST-E; IDENTIFIER: RN102429339; LOCATION: Houston, Harris County; TYPE OF FACILITY: retail convenience store with sales of gasoline; RULES 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; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$23,250; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL

OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Mullin Independent School District; DOCKET NUMBER: 2014-0584-PWS-E; IDENTIFIER: RN101256550; LOCATION: Mullin, Mills County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: \$6,669; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: QUALITY RETAILER, INCORPORATED dba Quality Food; DOCKET NUMBER: 2014-0604-PST-E; IDENTIFIER: RN102795416; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Red River Oilfield Services, LLC; DOCKET NUMBER: 2014-0583-AIR-E; IDENTIFIER: RN105713226; LOCATION: Springtown, Parker County; TYPE OF FACILITY: oilfield drilling pipe inspection and service yard; RULE VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions from impacting off property receptors; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: Farhaudd Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Roger Lee; DOCKET NUMBER: 2014-1117-WOC-E; IDENTIFIER: RN107285173; LOCATION: Flomot, Motley County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license (public water supply); PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(25) COMPANY: Shintech Incorporated; DOCKET NUMBER: 2014-0299-AIR-E; IDENTIFIER: RN100213198; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§116.115(c), 101.20(3), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review Permit Numbers 9347 and PSD-TX-285M5, Special Conditions Number 1, and Federal Operating Permit (FOP) Number O1361, Special Terms and Conditions (STC) Number 10, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O1361, STC Number 2F, by failing to submit an initial notification for Incident Number 189705 within 24 hours of the discovery of the emissions event; PENALTY: \$7,080; ENFORCEMENT COORDINATOR: Farhaudd Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: TAYLOR DISTRIBUTING COMPANY, INCORPORATED dba Jesse Taylor Oil; DOCKET NUMBER: 2014-0636-PST-E; IDENTIFIER: RN101567188; LOCATION: Fort Worth, Texas 76137, Tarrant County; TYPE OF FACILITY: transporter; RULE VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC §26.3467(d), by failing to have deposited a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ

delivery certificate; PENALTY: \$10,109; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Terry Memorial Hospital District; DOCKET NUMBER: 2014-1136-PST-E; IDENTIFIER: RN101775666; LOCATION: Brownfield, Terry County; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.8(c) by failing to submit initial/renewal underground storage tank registration and self-certification form; PENALTY: \$875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(28) COMPANY: TPC Group LLC; DOCKET NUMBER: 2014-0687-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing facility; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1327, Special Terms and Conditions Number 19, and New Source Review Permit Number 20485, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$5,775; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: TWIN LAKES CLUB, INCORPORATED; DOCKET NUMBER: 2014-0893-PWS-E; IDENTIFIER: RN101267060; LOCATION: Guy, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), 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 post public notification and submit a copy of the public notification to the executive director for the failure to submit DLQORs; 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; and 30 TAC §290.106(e), by failing to provide the results of nine year sampling for asbestos to the executive director for the January 1, 2005 - December 31, 2013 monitoring period; PENALTY: \$1,380; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201403938

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 19, 2014



### Enforcement Orders

An agreed order was entered regarding Attebury Grain, LLC, Docket No. 2012-1326-AIR-E on August 8, 2014 assessing \$12,900 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 Lewis Henderson, Docket No. 2012-2168-MLM-E on August 8, 2014 assessing \$32,886 in administrative penalties with \$29,286 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SNI Corporation dba Broadway Food Mart, Docket No. 2013-0399-PST-E on August 8, 2014 assessing \$14,216 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 Motiva Enterprises LLC, Docket No. 2013-0885-AIR-E on August 8, 2014 assessing \$35,689 in administrative penalties with \$7,137 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RF FOOD AND GAS, INC. dba E-Z Stop 1, Docket No. 2013-1074-PST-E on August 8, 2014 assessing \$20,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INVISTA S.a.r.l., Docket No. 2013-1243-AIR-E on August 8, 2014 assessing \$51,650 in administrative penalties with \$10,330 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DRY CLEAN WORLD, LTD., Docket No. 2013-1346-DCL-E on August 8, 2014 assessing \$10,000 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 STAR 1485 WEST, INC., Docket No. 2013-1492-PST-E on August 8, 2014 assessing \$21,093 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 Mockingbird Midstream Gas Services, L.L.C., Docket No. 2013-1536-AIR-E on August 8, 2014 assessing \$22,736 in administrative penalties with \$4,544 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frito-Lay, Inc., Docket No. 2013-1539-IWD-E on August 8, 2014 assessing \$16,775 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pasadena, Docket No. 2013-1553-MWD-E on August 8, 2014 assessing \$15,750 in administrative penalties with \$3,150 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 Flint Hills Resources Port Arthur, LLC, Docket No. 2013-1610-AIR-E on August 8, 2014 assessing \$26,813 in administrative penalties with \$5,362 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Linden, Docket No. 2013-1775-PWS-E on August 8, 2014 assessing \$1,212 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe's & Cho, Inc. dba Joe's Future Food Mart, Docket No. 2013-1777-PST-E on August 8, 2014 assessing \$9,563 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 BASF TOTAL Petrochemicals LLC, Docket No. 2013-1835-AIR-E on August 8, 2014 assessing \$345,938 in administrative penalties.

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 The Premcor Refining Group Inc., Docket No. 2013-1862-AIR-E on August 8, 2014 assessing \$55,063 in administrative penalties with \$11,012 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 DHP Sales & Services Inc dba Champs Food Mart, Docket No. 2013-1917-PST-E on August 8, 2014 assessing \$9,420 in administrative penalties with \$1,884 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 Copano Processing, L.P., Docket No. 2013-1952-AIR-E on August 8, 2014 assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Hunt Special Utility District, Docket No. 2013-2002-PWS-E on August 8, 2014 assessing \$2,600 in administrative penalties with \$2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leona Bullock dba Blue Ridge Mobile Home Park, Docket No. 2013-2036-PWS-E on August 8, 2014 assessing \$210 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SNI Corporation dba Broadway Food Mart, Docket No. 2013-2053-PWS-E on August 8, 2014 assessing \$2,780 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 E. I. du Pont de Nemours and Company, Docket No. 2013-2104-IWD-E on August 8, 2014 assessing \$26,250 in administrative penalties with \$5,250 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 BRANDON-IRENE WATER SUPPLY CORPORATION, Docket No. 2013-2106-PWS-E on August 8, 2014 assessing \$4,870 in administrative penalties.

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 AMK Properties L L C dba Amigos Fuel Center, Docket No. 2013-2117-PWS-E on August 8, 2014 assessing \$2,036 in administrative penalties.

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 Town of Westlake, Docket No. 2013-2122-WQ-E on August 8, 2014 assessing \$30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2013-2123-PWS-E on August 8, 2014 assessing \$366 in administrative penalties with \$366 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 NYTEX Automatic Products, Inc., Docket No. 2013-2159-MLM-E on August 8, 2014 assessing \$12,750 in administrative penalties with \$2,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mason, Docket No. 2013-2177-PWS-E on August 8, 2014 assessing \$690 in administrative penalties with \$690 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ESM Land Group, LLC, Docket No. 2013-2187-MSW-E on August 8, 2014 assessing \$11,250 in administrative penalties with \$2,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Howard Water Supply Corporation, Docket No. 2013-2191-PWS-E on August 8, 2014 assessing \$336 in administrative penalties with \$336 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2013-2193-AIR-E on August 8, 2014 assessing \$15,000 in administrative penalties with \$3,000 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 Jim Hogg County Water Control and Improvement District 2, Docket No. 2014-0016-PWS-E on August 8, 2014 assessing \$2,223 in administrative penalties with \$2,223 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 Bryan Iron & Metal, Ltd. dba Texas Commercial Waste, Docket No. 2014-0034-MSW-E on August 8, 2014 assessing \$16,250 in administrative penalties with \$3,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding Golden Spread Electric Cooperative, Inc., Docket No. 2014-0042-PWS-E on August 8, 2014 assessing \$630 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JX Nippon Chemical Texas Inc., Docket No. 2014-0047-AIR-E on August 8, 2014 assessing \$8,873 in administrative penalties with \$1,774 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 DURGA ENTERPRISES INC dba Omni Gas, Docket No. 2014-0051-PST-E on August 8, 2014 assessing \$7,846 in administrative penalties with \$1,569 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GLASSEL PROPERTIES, LLC, Docket No. 2014-0070-PWS-E on August 8, 2014 assessing \$1,110 in administrative penalties with \$1,110 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 SHINTECH INCORPORATED, Docket No. 2014-0089-PWS-E on August 8, 2014 assessing \$253 in administrative penalties.

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 Allsup's Convenience Stores, Inc., Docket No. 2014-0167-PWS-E on August 8, 2014 assessing \$582 in administrative penalties with \$582 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 WOODLAKE-JOSSERAND WATER SUPPLY CORPORATION, Docket No. 2014-0223-PWS-E on August 8, 2014 assessing \$202 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 UTLX Manufacturing LLC, Docket No. 2014-0265-AIR-E on August 8, 2014 assessing \$27,800 in administrative penalties with \$5,560 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Chillicothe, Docket No. 2014-0271-PWS-E on August 8, 2014 assessing \$345 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201403961

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 20, 2014



### Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application No. 40275

Application. R & J Recycling and Disposal, P.O. Box 2047, Center, Texas 75935, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40275, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, R & J Transfer Station will be located approximately 0.2 miles south of Texas Highway 249 along Cordoba Drive; 77088, in Harris County. The Applicant is requesting authorization to transfer municipal solid waste (MSW) which includes: construction and demolition materials, (which includes scrap lumber and wood, concrete and masonry rubble, trees, brush, soil, gypsum board, plastic, paper, and cardboard packaging, scrap ferrous, and non-ferrous metals); mixed MSW waste (which includes household and commercial waste), and non-hazardous Class 1, Class 2, and Class 3 industrial solid waste. The registration application is available for viewing and copying at the Shepard-Acres Homes Neighborhood Library at 8501 West Montgomery, Houston, Texas 77088 and may be viewed online at <http://www.rolloffgarbage.com>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.894172&lng=-95.44777167&zoom=13&type=r>. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice

of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to <http://www10.tceq.texas.gov/epic/ecmnts/>. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ 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). Further information may also be obtained from R & J Recycling and Disposal at the address stated above or by calling James F. Neyens, P.E., Consulting Engineer at (512) 684-3156.

TRD-201403958

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 20, 2014



## Notice of District Petition

Notices issued August 11 and August 13, 2014

TCEQ Internal Control No. D-04172014-028; Cottonwood Municipal Utility District No. 2 of Grayson County (the "District"); Walton Texas, LP and Walton USA Cottonwood, LP (together the "Property Owners") and all these collectively (the "Petitioners") filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Cottonwood Municipal Utility District No. 2 of Grayson County under Chapter 54 of the Texas Water Code and the procedural rules of the TCEQ. The petition states the following: (1) the Property Owners hold title to the Property (the proposed annexation area) and are owners of a majority in value of the land proposed to be included in the District; (2) there is one lien holder (Walton Texas, LP) on the Property; (3) the Property contains approximately 136.9222 acres located in Grayson County, Texas; and (4) the Property is within the extraterritorial jurisdiction of the City of Howe (the "City"). Pursuant to Texas Water Code §54.016, the Petitioners petitioned the City for consent to include the Property into the District. Application material indicates that the City approved the petition with an invalid consent. The Property Owners requested that the City make available water and wastewater service, pursuant to Texas Water Code §54.016(b). The City and the Property Owners failed to execute a mutually agreeable contract for providing water and wastewater service, as referred to in Texas Water Code §54.016(c). Pursuant to Texas Water Code §54.016(d), the Petitioners then filed an application with the TCEQ for annexation of the Property into the District.

TCEQ Internal Control No. D-04112014-023; The Henderson-Wessendorff Foundation, a Texas non-profit corporation (the "Petitioner") filed a petition for creation of Fort Bend County Municipal Utility District No. 215 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative

Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 577.886 acres located within Fort Bend County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Richmond, Texas. By Ordinance No. 2013-16, passed and approved on October 21, 2013, the City of Richmond, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code Section 54.016 and authorized the Petitioners to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) design, construct, acquire, improve, extend, maintain, and operate an adequate and efficient waterworks and sanitary sewer system primarily for residential and commercial purposes; (2) design, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide drainage for the proposed District, and to control, abate, and amend local storm waters or other harmful excesses of water; (3) design, construct, acquire, finance, issue bonds for, and convey roads and improvements in aid of roads; (4) design, construct, acquire, improve, extend, maintain, and operate such other additional facilities, systems, plants, and enterprises as may be consonant with any or all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the proposed District's projects, and it is estimated by the Petitioners, from such information available at this time, that such cost will be approximately \$81,470,000.

## 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-201403959

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 20, 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 **September 29, 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 September 29, 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: Bill Dechert; DOCKET NUMBER: 2014-0361-MSW-E; TCEQ ID NUMBER: RN105229645; LOCATION: 343 North United States Highway 83, Junction, Kimble County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ AO Docket Number 2007-1084-MLM-E, Ordering Provisions Numbers 2.b. and 2.c., by failing to prevent the unauthorized disposal of MSW; PENALTY: \$23,000; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: EOLA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0139-PWS-E; TCEQ ID NUMBER: RN102673183; LOCATION: Farm-to-Market Road 765 and State Highway 381, Eola, Concho County; TYPE OF FACILITY: public water system; RULES 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 for the January 1, 2002

- December 31, 2010, and January 1 - December 31, 2013, monitoring periods; 30 TAC §290.106(e), by failing to provide the results of quarterly sampling for nitrates to the executive director for the second and third quarters of 2013; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay public health service fees, including late fees, for TCEQ Financial Administration Account Number 90480011 for Fiscal Year 2014; PENALTY: \$644; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: HD Recycling, LLC; DOCKET NUMBER: 2012-1359-MSW-E; TCEQ ID NUMBER: RN106327521; LOCATION: 105 Dennis Road, Weatherford, Parker County; TYPE OF FACILITY: waste processing facility; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste; 30 TAC §37.921 and §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors; and 30 TAC §328.5(f)(2)(B), by failing to maintain the required waste minimization and recycling records; PENALTY: \$12,302; 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: HD Recycling, LLC; DOCKET NUMBER: 2013-1654-MSW-E; TCEQ ID NUMBER: RN106327521; LOCATION: 105 Dennis Road, Weatherford, Parker County; TYPE OF FACILITY: waste processing facility; RULES VIOLATED: 30 TAC §328.5(b)(4), by failing to report any updates or changes to information contained in the site report within 90 days of the effective date of change; 30 TAC §328.5(f)(1) and (3), by failing to maintain all records necessary to show compliance with the requirements of limitations on storage of recyclable materials and proof of financial assurance sufficient to cover all closure costs; 30 TAC §328.4(b)(3), by failing to meet the recycling rates relating to limitations on storage of recyclable materials; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §328.5(d) and §37.921, by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors; and 30 TAC §328.5(e), by failing to complete closure requirements 180 days following the most recent acceptance of processed or unprocessed materials; PENALTY: \$105,207; 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.

(5) COMPANY: Justin Hasara d/b/a Hasara Land Services; DOCKET NUMBER: 2013-1772-AIR-E; TCEQ ID NUMBER: RN106541915; LOCATION: temporarily located on 27.551 acres, more or less, more particularly described as "Tract One" in that certain General Warranty Deed dated January 31, 2013, recorded as Document Number 2013011052 in the Deed Records of Montgomery County, Texas, from Dewey J. Marshall and Sandra K. Marshall to Respondent, being that same tract of land described in the property tax records of Montgomery County, Texas as Property ID Number R432842, A0151-Cartwright Matthew Tract IH-3, Abst-A11 in Montgomery County, Texas; TYPE OF FACILITY: portable air curtain incinerator (ACI) with trench and manifold system; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §106.496(d)(2) and §122.143(4), and Federal Operating Permit (FOP) Number O3570/General Operating Permit (GOP) Number 518, Terms and Conditions (b)(12)(C), by failing to keep the trench length from exceeding the length of the air blower manifold on the ACI; THSC, §382.085(b), 30 TAC §106.496(f)(1)(C) and §122.143(4), and FOP Number O3570/GOP Number 518, Terms and Conditions (b)(12)(C), by failing to store ash

in a manner that does not allow the material to smolder or burn outside of the ACI; and THSC, §382.085(b), 30 TAC §106.496(c)(2)(B) and §122.143(4), and FOP Number O3570/GOP Permit Number 518, Terms and Conditions (b)(12)(C), by failing to limit the operation of the portable ACI to 600 hours or 180 consecutive days, whichever occurs first; PENALTY: \$4,524; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-1877; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: KM Aviation, Inc.; DOCKET NUMBER: 2013-0758-AIR-E; TCEQ ID NUMBER: RN106626534; LOCATION: 420 County Road 1618, Rusk, Cherokee County; TYPE OF FACILITY: aircraft surface coating facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization for surface coating operations; PENALTY: \$2,500; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: KRMN GROUP LLC d/b/a Fuel Zone; DOCKET NUMBER: 2013-0009-PST-E; TCEQ ID NUMBER: RN105118889; LOCATION: 11331 Lake June Road, Balch Springs, Dallas County; TYPE OF FACILITY: underground storage tank (UST) and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), (2), (A)(i)(III), (d)(1)(B)(ii), and (iii)(I), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), by failing to provide proper release detection for the pressurized piping associated with the UST system by failing to conduct the annual piping tightness test, by failing to test the line leak detectors at least once per year for performance and operational reliability, by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.602(a), by failing to identify and designate for each UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.246(7)(A), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; THSC, §382.085(b) and 30 TAC §115.248(1), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and THSC, §382.085(b) and 30 TAC §115.222(3), by failing to ensure that no gasoline leaks, as detected by sampling, sight, sound, or smell, exist anywhere in the dispensing equipment or Stage II vapor recovery system; PENALTY: \$20,899; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: LOYOLA GROCERIES INC. d/b/a Loyola Grocery; DOCKET NUMBER: 2013-1980-PST-E; TCEQ ID NUMBER: RN102374170; LOCATION: 6710 Loyola Lane, Austin, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES

VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$7,067; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC175, (512) 239-1204; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400.

(9) COMPANY: Maha Matar; DOCKET NUMBER: 2013-1276-PST-E; TCEQ ID NUMBER: RN102929205; LOCATION: 9491 Kempwood Drive, Houston, Harris County; TYPE OF FACILITY: inactive underground storage tank (UST) system and former gas station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; 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 §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$10,687; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC175, (512) 239-1204; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: United States Department of Justice; DOCKET NUMBER: 2012-2012-PST-E; TCEQ ID NUMBER: RN102006749; LOCATION: 207 South Houston Street, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by TCEQ personnel; PENALTY: \$5,625; 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-201403939  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: August 19, 2014

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Notice of Water Quality Applications

The following notices were issued on August 8, 2014 through August 15, 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

BLUE JAY DAIRY for a Major Amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003439000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to reconfigure the land management units to add new land and remove some currently authorized acreage, add a pivot, reconfigure the grassed waterway, request well buffer exception for Well #3, and add two free stall barns to the facility. The currently authorized maximum capacity of 1,570 head, of which 1,500 head are milking cows, remains unchanged. The facility is located on the east side of Farm-to-Market Road 219, approximately one mile south of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 8 in Lingleville in Erath County, Texas.

NEXTEX COMPOSTING proposes to operate Stouts Creek Composting, a facility which produces compost, has applied for a new permit, draft Permit No. WQ0005107000, to authorize the disposal of dewatering from grease trap waste, on-site sewage facility wastewater, and dewatering from publicly operated treatment works sewage sludge at a daily average flow not exceed 22,000 gallons per day via irrigation of 23.23 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 1000 County Road 3372, near the intersection of County Road 3372 and County Road 3367, approximately 8.6 miles north of the Town of Pickton on County Road 269, then approximately 1.7 miles east of County Road 269 on County Road 3372, Hopkins County, Texas 75471.

CROCKETT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TPDES Permit No. WQ0010059001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 3,000 feet west of State Highway 163 and approximately 2.5 miles south of Interstate Highway 10 in Crockett County, Texas 76943.

CITY OF SCHULENBURG has applied for a renewal of TPDES Permit No. WQ0010115002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 499,000 gallons per day. The facility is located on Babylon Lane, approximately 500 feet west of the intersection of Babylon Lane and Williams Avenue, Schulenburg, in Fayette County, Texas 78956.

EL PASO COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 4 has applied for a renewal of TPDES Permit No. WQ0010166001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at 17270 Alameda Avenue, approximately 8,000 feet Southeast of the intersection of State Highway No. 20 and 76 near the town of Fabens in El Paso County, Texas 79838.

CITY OF SHINER has applied for a renewal of TPDES Permit No. WQ0010280001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 850,000 gallons per day. The facility is located at 1024 South St. Ludmilla, Shiner, in Lavaca County, Texas 77984.

CITY OF FREEPORT has applied for a renewal of TPDES Permit No. WQ0010882001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gallons per day from Outfall 001 and a volume not to exceed an annual average flow of 1,400,000 gallons per day from Outfall 002. The facility is located immediately south of State Highway 288 on the east bank of the Brazos River in Brazoria County, Texas 77541.

CITY OF HIDALGO has applied for a renewal of TPDES Permit No. WQ0011080001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,700,000 gallons per day. The draft permit 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 2300 East Highline Road, east of the City of Hidalgo, approximately 0.5 mile north of U.S. Highway 281 and 0.5 mile east of Farm-to-Market Road 336 in Hidalgo County, Texas 78557.

R AND B MOBILE PARK LLC has applied for a renewal of TPDES Permit No. WQ0012296001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The facility is located at 4303 Pate Road, College Station in Brazos County, Texas 77845.

LAMAR CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013007001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,000 gallons per day. The facility is located at 5111 Farm-to-Market Road 762, Richmond, approximately 4.5 miles east-southeast of the City of Rosenberg in Fort Bend County, Texas 77469.

SWWC UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0013138001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 14517 Lippincott Street, Austin, approximately 1.3 miles south-southeast of the intersection of Farm-to-Market Road 969 and Hunter Bend Road, and approximately 2.3 miles south-east of the intersection of Farm-to-Market Roads 969 and 973 in Travis County, Texas 78725.

NORTH ALAMO WATER SUPPLY CORPORATION has applied for a renewal of TCEQ Permit No. WQ0013747002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day via surface irrigation of 56 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 approximately 0.9 mile north of State Highway 107 and 0.5 mile west of Farm-to-Market Road 1423, north of the community of San Carlos in Hidalgo County, Texas 78539.

MAGNOLIA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014124001, 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 28747 Hardin Store Road, Magnolia in Montgomery County, Texas 77354.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO 131 has applied for a renewal of TPDES Permit No. WQ0014197001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. The facility is located at 236 Kestrel Lane, Rosharon in Fort Bend County, Texas 77583.

HAYS COUNTY DEVELOPMENT DISTRICT NO 1 has applied for a renewal of TCEQ Permit No. WQ0014208001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 186,000 gallons per day via surface irrigation of 83 acres of open spaces, parks, green belts and right-of-ways. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 1,200 feet west of the intersection of Ranch Road 12 and Farm-to-Market Road 150 in Hays County, Texas 78620.

DRIFTWOOD EQUITIES LTD has applied for a renewal of TCEQ Permit No. WQ0014235001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via non-public access subsurface drip irrigation of 2.3 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 18300 Farm-to-Market Road 1826, Driftwood, approxi-

mately 300 feet northwest of the intersection of Farm-to-Market Road 1826 and Farm-to-Market Road 967 and 1,400 feet north of Camp Ben McCulloch in Hays County, Texas 78619.

TOWN OF VAN HORN has applied for a renewal of TPDES Permit No. WQ0014241001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 405,000 gallons per day with provisions for irrigating 45 acres of a golf course. The facility is located approximately 1 mile southeast of the intersection of U.S. Highway 10 and U.S. Highway 90 in Culberson County, Texas 79855.

ZAVALA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a renewal of TCEQ Permit No. WQ0014367002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 330,000 gallons per day via surface irrigation of 100 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 approximately 6,000 feet northwest of the intersection of Highway 83 and Highway 57 in Zavala County, Texas 78872.

CHM PARKS INC has applied for a new permit, proposed TPDES Permit No. WQ0015198001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. This facility was previously permitted under TPDES Permit No. WQ0014967001 which expired October 1, 2013. The facility is located approximately 2,500 feet northwest of the Community of Culleoka, immediately west of Farm-to-Market Road 982 and north of the Culleoka Baptist Church in Collin County, Texas 75407.

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-201403957  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 20, 2014



## Notice of Water Rights Applications

Notices issued August 12 and August 14, 2014.

APPLICATION NO. 12890; Gulf Marine Fabricators, L.P., Applicant, P.O. Box 3000, Aransas Pass, Texas 78336, has applied for a Water Use Permit to divert and use not to exceed 20 acre-feet of water per year from the Corpus Christi Ship Channel, San Antonio-Nueces Coastal Basin for industrial purposes (hydrostatic testing) in San Patricio County, Texas. The application and fees were received on July 27, 2012, and additional information was received on October 26, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 17, 2013. The TCEQ 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, requiring the permittee to install a measuring device. The application and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to 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.

APPLICATION NO. 14-1600A; Grayden Cedarworks, Inc., Applicant, P.O. Box 325, Junction, Texas 76849, has applied to amend Certificate of Adjudication No. 14-1600 to maintain an existing reservoir on an unnamed tributary of Johnson Fork Creek, Colorado River Basin for industrial (cooling) purposes in Kimble County. The application and a portion of the fees were received on May 1, 2012. Additional information and partial fees were received on June 22, August 28, and September 6, 2012, and July 10, 2014. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 2, 2012. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to 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-201403960  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 20, 2014



## Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

**Deadline: Lobby Activities Report due January 10, 2014**

Dan McDonough, 470 Atlantic Ave., 12th Fl., Boston, Massachusetts 02210

**Deadline: Lobby Activities Report due February 10, 2014**

Peyton McKnight, 1001 Congress Ave., Ste. 200, Austin, Texas 78701  
Benjamin W. Sebree, 1611 West Ave., Ste. 300, Austin, Texas 78701

**Deadline: Lobby Activities Report due May 12, 2014**

Jennifer E. Sellers, 700 Mandarin Flyway #203, Cedar Park, Texas 78613

**Deadline: Lobby Activities Report due June 10, 2014**

Jose E. Camacho, 5900 Southwest Pkwy., Bldg. 3, Austin, Texas 78735

**Deadline: 8-Day Pre-Election Report due May 2, 2014 for Committees**

Meghan E. Galvez, Duncanville Citizens Alliance for Rights and Equality, 203 Timothy Trl., Duncanville, Texas 75137

**Deadline: 8-Day Runoff Report due May 19, 2014 for Committees**

Clint A. Long, Small Gov Texas, 108 Sand Creek Cr., Sherman, Texas 75092

Cynthia J. Siegel, Greater Houston Council of Federated Republican Women, 4615 Huisache St., Bellaire, Texas 77401

**Deadline: Personal Financial Statement due June 30, 2014**

Michael G. Cano, 1316 E. Augusta Ave., McAllen, Texas 78503

Christopher Gilbert, 8725 E. Kettle Pl., Centennial, Colorado 80112

Thomas McMinn, 1405 W. 29th St., Austin, Texas 78703

TRD-201403830

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Filed: August 13, 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 June 18, 2014 through August 18, 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, August 22,

2014. The public comment period for this project will close at 5:00 p.m. on Monday, September 22, 2014.

### FEDERAL AGENCY ACTIONS:

**Applicant: City of Port Lavaca;** Location: The project site is located in the Harbor of Refuge, adjacent to Lavaca Bay, in Port Lavaca, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Lavaca East, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 28.59454 North; Longitude: 96.61495 West. Project Description: The applicant, the City of Port Lavaca, requests authorization to complete construction of a previously authorized project (Corps Permit #13821(06)), originally issued on 30 October 1979, which included construction of approximately 4,500 feet of bulkhead around the Harbor of Refuge and removal and replacement of approximately 2,000 feet of existing bulkhead. The improved harbor will be used by the public, residents of Port Lavaca and surrounding communities, as well as industrial tenants. A total of 1.99 acres of impacts, including 1.82 acres of mud bottom and 0.17 acre of wetland fill is proposed. The compensatory mitigation required by DA Permit #13821(06), construction of 4-acre salt marsh, has been completed. The jurisdiction will be made by an approved jurisdictional determination. The applicant's plans are enclosed in 11 sheets. CMP Project No: 14-1935-F1. Type of Application: U.S.A.C.E. permit application #SWG-1995-02218. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act.

**Applicant: Oxy Ingleside Energy Center, LLC;** Location: The project site is located near Corpus Christi Bay, on a 464.5-acre site adjacent to the former Naval Station Ingleside, east of Ingleside on the Bay, in 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: 27.830837 North; Longitude: 97.207736 West. Project Description: The applicant proposes to mechanically grade and fill an approximately 464.5-acre area that includes approximately 27.67 acres of palustrine wetlands adjacent to Corpus Christi Bay. The purpose of the project is to provide area for the future expansion of the applicant's facility for storage and other terminal-related operations for the loading of crude oil, condensate and liquefied petroleum gas and liquefied natural gas onto ships. The expansion includes construction of an 135.18-acre condensate storage area, a 28.16-acre truck loading area, an 85.87-acre propane and butane sphere area, a 68.67-acre LPG and LNG refrigeration area, a 70.11-acre oil tank storage area, a 6.79-acre utility corridor, a 41.57-acre pipeline corridor, and 24.69 acres of new roadway within the project site. The proposed project site would be graded and leveled along existing contours to preserve existing site drainage. Impacts to palustrine wetlands would be mitigated at a 1:1 ratio on site. CMP Project No: 14-1938-F1. Type of Application: U.S.A.C.E. permit application #SWG-2014-00381. This application will be reviewed pursuant to §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).**

**Applicant: Enterprise Products Operating, LLC;** Location: The project is located in wetlands adjacent to the Neches River at a facility located at the terminus of Old Mansfield Ferry Road, near Beaumont, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 30.404 North; Longitude: 94.026 West. Project Description: The applicant proposes to discharge fill material into 8.28 acres of palustrine emergent and palustrine scrub-shrub wetlands adjacent to the Neches River during the grading of the project site for a phased redevelopment of the Beaumont Storage and Load-

ing Terminal. The applicant proposes to redevelop, in three phases, the terminal to import and export petroleum products from the facility. Phase 1 will rehabilitate existing tanks, add two new large tanks and five smaller tanks, and grade the entire site. Phase 2 will construct an ethane export facility. Phase 3 will construct eight additional storage tanks, new office/control room, and truck loading area. CMP Project No: 14-1855-F1. Type of Application: U.S.A.C.E. permit application #SWG-2013-01026. This application will be reviewed pursuant to §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).**

**Applicant: Gulf Marine Fabricators;** Location: The project site is located in Redfish Bay, at the Gulf Marine Fabricators location near the confluence of the Corpus Christi Ship Channel and the Gulf Intracoastal Waterway, in Port Ingleside, San Patricio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: PORT INGLESIDE, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.82112 NORTH; Longitude: 97.19224 West. Project Description: The applicant proposes to amend Department of the Army Permit SWG-2006-02562 for the purpose of hydraulically dredging an approximate 24.15-acre area adjacent to the applicant's property to a depth of -45 MLT. Approximately 500,000 cubic yards of material will be hydraulically dredged and placed in an upland placement area located on the applicant's property or in Dredged Material Placement Area (DMPA) 10 located nearby. In addition, the Corps will review the potential for allowing maintenance dredging of this project location for a period of 10 years. CMP Project No: 14-1946-F1. Type of Application: U.S.A.C.E. permit application #SWG-2006-02562. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899.

**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 e-mail at [federal.consistency@glc.texas.gov](mailto:federal.consistency@glc.texas.gov). Comments should be sent to Mr. Newby at the above address or by e-mail.

TRD-201403972  
Larry L. Laine  
Chief Clerk/Deputy Land Commissioner  
General Land Office  
Filed: August 20, 2014

## Texas Health and Human Services Commission

### Notice of Adopted Medicaid Payment Rate for Pediatric Care Facility

**Adopted Rate.** As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following per diem reimbursement rate for the Nursing Facility program operated by the Texas Department of Aging and Disability Services (DADS).

Reimbursement rate for the nursing facility pediatric care facility special reimbursement class for Truman W. Smith Children's Care Center is \$251.22 per day to be effective September 1, 2014.

**Hearing.** HHSC conducted a public hearing on August 7, 2014, to receive public comment on the proposed rate. The hearing was held in accordance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing notice and the notice of proposed reimbursement rates were published in the July 18, 2014, issue of the *Texas Register* (39 TexReg 5640).

**Methodology and Justification.** The proposed rate was determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology.

TRD-201403954  
Jack Stick  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 20, 2014

### Notice of Adopted Reimbursement Rates for Nursing Facilities

**Adopted Rates.** As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following per diem reimbursement rates for the Nursing Facility program operated by the Texas Department of Aging and Disability Services (DADS).

Reimbursement rates for the Nursing Facility program are to be effective September 1, 2014, as follows:

Base Rates by RUG (Resource Utilization Group) class:



<b>RUG</b>	<b>RUG base rate</b>
RAD (Rehabilitation D)	\$193.36
RAC (Rehabilitation C)	\$170.79
RAB (Rehabilitation B)	\$160.40
RAA (Rehabilitation A)	\$141.07
SE3 (Extensive Services 3)	\$230.93
SE2 (Extensive Services 2)	\$196.07
SE1 (Extensive Services 1)	\$170.25
SSC (Special Care C)	\$166.27
SSB (Special Care B)	\$157.19
SSA (Special Care A)	\$156.83
CC2 (Clinically Complex C2)	\$135.82
CC1 (Clinically Complex C1)	\$128.65
CB2 (Clinically Complex B2)	\$124.59
CB1 (Clinically Complex B1)	\$118.96
CA2 (Clinically Complex A2)	\$112.94
CA1 (Clinically Complex A1)	\$106.16
IB2 (Impaired Cognition B2)	\$113.11
IB1 (Impaired Cognition B1)	\$105.45
IA2 (Impaired Cognition A2)	\$96.30
IA1 (Impaired Cognition A1)	\$91.32
BB2 (Behavior Problems B2)	\$111.06
BB1 (Behavior Problems B1)	\$100.51
BA2 (Behavior Problems A2)	\$94.50
BA1 (Behavior Problems A1)	\$85.51
PE2 (Reduced Physical Function E2)	\$119.61
PE1 (Reduced Physical Function E1)	\$113.06
PD2 (Reduced Physical Function D2)	\$114.65
PD1 (Reduced Physical Function D1)	\$107.90
PC2 (Reduced Physical Function C2)	\$105.03
PC1 (Reduced Physical Function C1)	\$100.72
PB2 (Reduced Physical Function B2)	\$98.06
PB1 (Reduced Physical Function B1)	\$93.31
PA2 (Reduced Physical Function A2)	\$87.50
PA1 (Reduced Physical Function A1)	\$82.56
Default when Minimum Data Set assessment data are incomplete	\$82.56
Default when a Minimum Data Set assessment is missing.	\$82.56
Supplemental Payments:	
Ventilator - Continuous	\$128.62
Ventilator - Less than Continuous	\$51.45
Pediatric Tracheostomy	\$77.17

Facilities participating in the Enhanced Direct Care Staff Rate will receive one of the following payment rates per day in addition to the above payment rates based upon their level of enrollment in the Enhanced Direct Care Staff Rate:

<b>Minutes Associated with Adopted Rate*</b>	<b>Adopted Rate Per Diem</b>
1 LVN Minutes = 2.05 Aide Minutes = 0.68 RN Minutes	\$0.40
2 LVN Minutes = 4.11 Aide Minutes = 1.37 RN Minutes	\$0.80
3 LVN Minutes = 6.16 Aide Minutes = 2.05 RN Minutes	\$1.20
4 LVN Minutes = 8.21 Aide Minutes = 2.74 RN Minutes	\$1.60
5 LVN Minutes = 10.26 Aide Minutes = 3.42 RN Minutes	\$2.00
6 LVN Minutes = 12.32 Aide Minutes = 4.11 RN Minutes	\$2.40
7 LVN Minutes = 14.37 Aide Minutes = 4.79 RN Minutes	\$2.80
8 LVN Minutes = 16.42 Aide Minutes = 5.47 RN Minutes	\$3.20
9 LVN Minutes = 18.47 Aide Minutes = 6.16 RN Minutes	\$3.60
10 LVN Minutes = 20.53 Aide Minutes = 6.84 RN Minutes	\$4.00
11 LVN Minutes = 22.58 Aide Minutes = 7.53 RN Minutes	\$4.40
12 LVN Minutes = 24.63 Aide Minutes = 8.21 RN Minutes	\$4.80
13 LVN Minutes = 26.68 Aide Minutes = 8.89 RN Minutes	\$5.20
14 LVN Minutes = 28.74 Aide Minutes = 9.58 RN Minutes	\$5.60
15 LVN Minutes = 30.79 Aide Minutes = 10.26 RN Minutes	\$6.00
16 LVN Minutes = 32.84 Aide Minutes = 10.95 RN Minutes	\$6.40
17 LVN Minutes = 34.89 Aide Minutes = 11.63 RN Minutes	\$6.80
18 LVN Minutes = 36.95 Aide Minutes = 12.32 RN Minutes	\$7.20
19 LVN Minutes = 39.00 Aide Minutes = 13.00 RN Minutes	\$7.60
20 LVN Minutes = 41.05 Aide Minutes = 13.68 RN Minutes	\$8.00
21 LVN Minutes = 43.10 Aide Minutes = 14.37 RN Minutes	\$8.40
22 LVN Minutes = 45.16 Aide Minutes = 15.05 RN Minutes	\$8.80
23 LVN Minutes = 47.21 Aide Minutes = 15.74 RN Minutes	\$9.20
24 LVN Minutes = 49.26 Aide Minutes = 16.42 RN Minutes	\$9.60
25 LVN Minutes = 51.32 Aide Minutes = 17.11 RN Minutes	\$10.00
26 LVN Minutes = 53.37 Aide Minutes = 17.79 RN Minutes	\$10.40
27 LVN Minutes = 55.42 Aide Minutes = 18.47 RN Minutes	\$10.80

\* LVN = Licensed Vocational Nurse; RN = Registered Nurse

Facilities that verify liability insurance coverage acceptable to HHSC will receive one of the following payment rates per day in addition

to the above payment rates based upon the type of liability insurance coverage they maintain:

<b>Type of Liability Insurance</b>	<b>Proposed Rate Per Diem</b>
General and Professional	\$1.67
Professional Only	\$1.54
General Only	\$0.14

**Hearing.** HHSC conducted a public hearing on August 7, 2014, to receive public comment on the proposed rates. The hearing was held in accordance with Title 1 of the Texas Administrative Code (TAC)

§355.105(g), which requires that public hearings be held on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing notice and the notice of proposed reimbursement

rates were published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5640).

**Methodology and Justification.** The adopted Medicaid payment rates incorporate appropriations provisions from the 2014-15 General Appropriations Act, which appropriated funds to provide for a six percent increase for NF and Hospice-NF payment rates, calculated based on the rates in effect on August 31, 2013. General Appropriations Act, 83d Leg., R.S., ch. 1411, art. II, rider 40, at II-20 (Health & Human Servs. Section, Dep't of Aging & Disability); see also Tex. Gov't Code §533.00251. In addition, the adopted payment rates effectuate Texas Government Code §533.00251(c)(1), which directs HHSC to set the minimum reimbursement rate paid to a nursing facility under the managed care program, including a "staff reimbursement rate." Tex. Gov't Code §533.00251(c)(1). HHSC's adopted payment rates were calculated in accordance with the rate setting methodology in Title 1 of the TAC, Part 15, Chapter 355, Subchapter C, §355.307 (relating to Reimbursement Setting Methodology); §355.308 (relating to Direct Care Staff Rate Component); and §355.312 (relating to Reimbursement Setting Methodology - Liability Insurance Costs). These rates and associated minute requirements were subsequently adjusted in accordance with Title 1 of the TAC, Part 15, Chapter 355, Subchapter A, §355.101 (relating to Introduction), and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs); and Title 1 of the TAC, Part 15, Chapter 355, Subchapter B, §355.201 (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

TRD-201403955

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: August 20, 2014



## Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance (state plan) under Title XIX of the Social Security Act. The proposed amendment concerns Disproportionate Share Hospital (DSH) reimbursement and is intended to meet the requirements of the 2014-2015 General Appropriations Act, S. B. 1, 83rd Legislature, Regular Session, 2013 (Article II, Health and Human Services Commission, Rider 86, Transitional Medicaid DSH and Related Payments). Rider 86 allows HHSC to expend up to \$160 million in general revenue funds in fiscal year (FY) 2014 and \$140 million in general revenue funds in FY 2015 to stabilize and improve Medicaid hospital payments. Although Rider 86 addresses both DSH and uncompensated care (UC) hospital payments, UC payments are distributed under the Texas Healthcare Transformation and Quality Improvement Program §1115 waiver and, therefore, an amendment to the state plan for UC payments is not necessary or included in the proposed amendment. HHSC also proposes to reorganize certain pages of the state plan to separate provisions related to hospital-specific limit (HSL) calculations from provisions related to DSH payments. The amendment is proposed to be effective September 1, 2014.

## DSH Supplemental Payments

The proposed amendment will revise the way the state's annual DSH allotment is distributed among eligible hospitals. State-owned hospitals may continue to be funded up to 100 percent of their interim hospital-specific limits (HSLs) with an additional limit for aggregate payments to institutions for mental diseases. HHSC proposes to then divide remaining available DSH funds into three, rather than two, DSH

funding pools for non-state-owned DSH hospitals. Key changes from the methodology described in the current state plan are: (1) all non-state-owned DSH hospitals will share in state general revenue funds remaining after state-owned hospitals' payment amounts are determined; and (2) all governmental entities that operate DSH hospitals will share the burden of funding the non-federal share of DSH payments. A hospital operated by a governmental entity that has not historically helped fund DSH payments will be assigned a weight equal to one plus one-half of the non-federal percentage in effect for the program year to ensure that there is not a significant reduction in the hospital's net DSH payments. All other weights currently in effect are proposed to be deleted.

## Reorganization of State Plan Pages

HHSC also proposes to reorganize certain pages of the state plan so that provisions related to the calculation of the HSL are separate from the pages related to DSH payments. This will enhance clarity and ensure that amendments to the state plan due to changes in the HSL calculation will not impact the plan pages describing DSH payments, and vice versa.

## Impact on aggregate expenditures

The proposed amendment is estimated to result in no change in the amount of federal funds eligible to be received by the state. The proposed amendment may result in additional costs to state government as a result of enforcing or administering the proposed amendment during the first five years the proposed amendment is in effect if additional state funds are identified as a source of non-federal funds for DSH payments. It is not possible to estimate the additional costs to the state, if any, at this time.

Interested parties may obtain copies of the proposed amendment by contacting Pam McDonald, Rate Analysis Department, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6079; by facsimile at (512) 730-7475; or by e-mail at pam.mcdonald@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-201403944

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: August 19, 2014



## Texas Lottery Commission

### Instant Game Number 1650 "\$100,000 Mega Bingo"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1650 is "\$100,000 MEGA BINGO". The play style for the game is "bingo".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1650 shall be \$5.00 per Ticket.

#### 1.2 Definitions in Instant Game No. 1650.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, COIN SYMBOL, BELL SYMBOL, B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,

27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1650 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
GOLD BAR SYMBOL	GOLD BAR
MONEY BAG SYMBOL	BAG
COIN SYMBOL	COIN
BELL SYMBOL	BELL
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
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E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$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 (1650), 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: 1650-000001-001.

K. Pack - A Pack of "\$100,000 MEGA BINGO" 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 "\$100,000 MEGA BINGO" Instant Game No. 1650 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 MEGA BINGO" Instant Game is determined once the latex on the Ticket is scratched off to expose 176 (one hundred seventy-six) Play Symbols. BINGO: The player must scratch the "CALLER'S CARD" area to reveal 16 (sixteen) Bingo Numbers and scratch the "BONUS BOX" to reveal BONUS Bingo Numbers and Play Symbols. On the six "BINGO" Cards, the player must scratch only those Bingo Numbers that match the "CALLER'S CARD" Numbers and the BONUS Bingo Numbers found in the "BONUS BOX". The player must also scratch the "FREE" spaces on the six (6) "BINGO" Cards. If the player matches all Bingo Numbers in a complete vertical, horizontal or diagonal line; all numbers in all four (4) corners; all numbers to complete an "X" [eight (8) numbers plus the "FREE" space]; on the same "BINGO" Card, the player wins the prize in the corresponding prize legend for that "BINGO" Card. Note: Only the highest prize per Card will be paid. BONUS BOX: The player must scratch the "BONUS BOX" to reveal the BONUS Bingo Numbers and Play Symbols. If a player reveals 2 matching Play Symbols, the player wins \$50 instantly. If a player reveals 3 matching Play Symbols, the player wins \$100 instantly. Only the highest prize paid. 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 176 (one hundred seventy-six) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
  2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have Play Symbol captions;
  3. Each of the Play Symbols must be present in its entirety and be fully legible;
  4. Each of the Play Symbols must be printed in black ink except for dual image games;
  5. The Ticket shall be intact;
  6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
  7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
  8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
  9. The Ticket must not be counterfeit in whole or in part;
  10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
  11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
  12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
  13. The Ticket must be complete and not miscut and have exactly 176 (one hundred seventy-six) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
  14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
  15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
  16. Each of the 176 (one hundred seventy-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the 176 (one hundred seventy-six) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.



C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current 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 four (4) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play Symbol patterns. Two (2) Tickets have identical Play Symbol patterns if they have the same Play Symbols in the same positions.

C. BINGO: No individual "BINGO" Card will win more than one (1) prize (i.e., only highest prize paid per card).

D. BINGO: All "BINGO" Cards will be different on a Ticket. Two cards are identical if and only if they have the same Play Symbols in the same positions.

E. BINGO: The Bingo Numbers within the "CALLERS CARD" and "BONUS BOX" will be different.

F. BINGO: All Tickets will have all of the "CALLER'S CARD" Bingo Numbers within the "CALLER'S CARD" and "BONUS BOX" reveal a number in at least one "BINGO" Card.

G. BINGO: There will be one (1) "FREE" Play Symbol fixed in the center of each "BINGO" Card.

H. BINGO: The number range used for each letter (B, I, N, G, O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60), O (61-75).

I. BONUS BOX: All games will contain (3) "BONUS BOX" Play Symbols.

J. BONUS BOX: Only highest prize paid.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "\$100,000 MEGA BINGO" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay \$25.00, \$50.00, \$100, \$200 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "\$100,000 MEGA BINGO" Instant Game prize of \$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 MEGA BINGO" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$100,000 MEGA BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$100,000 MEGA BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name

or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,200,000 Tickets in the Instant Game No. 1650. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1650 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	1,088,000	9.38
\$10	544,000	18.75
\$15	680,000	15.00
\$20	204,000	50.00
\$25	68,000	150.00
\$50	51,765	197.04
\$100	37,400	272.73
\$200	4,250	2,400.00
\$500	85	120,000.00
\$100,000	6	1,700,000.00

\*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 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1650 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. 1650, 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-201403971  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: August 20, 2014



**Texas Low-Level Radioactive Waste Disposal Compact Commission**

Notice of Receipt of Amendment Request for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an amendment request for an agreement for import for disposal of low-level radioactive waste from:

Xcel Energy (TLLRWDCC #1-0045-01)  
 2807 W. County Road 75  
 Monticello, Minnesota 55362-9637

The amendment request will be placed on the Compact Commission web site, [www.tllrwdcc.org](http://www.tllrwdcc.org), where it will be available for inspection and copying.

Comments on the amendment request are due to be received by September 12, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: [administration@tllr-wdcc.org](mailto:administration@tllr-wdcc.org).

TRD-201403931

Audrey Ferrell

Administrator

Texas Low-Level Radioactive Waste Disposal Compact Commission

Filed: August 18, 2014



## North Central Texas Council of Governments

### Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the June 27, 2014 issue of the *Texas Register* (39 TexReg 4996). The selected consultant will perform a Departing Airline Passenger Survey at Dallas Love Field Airport for the North Central Texas Council of Governments.

The consultant selected for this project is TransSolutions, 14600 Trinity Boulevard, Suite 200, Fort Worth, Texas 76155. The amount of the contract is not to exceed \$74,999.

TRD-201403920

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: August 18, 2014



### Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the June 13, 2014 issue of the *Texas Register* (39 TexReg 4705). The selected consultant will perform the 2014 Vehicle In-Plant Inspection for the North Central Texas Council of Governments.

The consultant selected for this project is Transit Resource Center, 5840 Red Bug Lake Road, Suite 165, Winter Springs, Florida 32708. The amount of the two year base contract is not to exceed \$14,000.

TRD-201403921

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: August 18, 2014



### Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments (NCTCOG) publishes this notice of vendor contract award. The vendor request appeared in the May 2, 2014 issue of the *Texas Register* (39 TexReg 3517). As part of NCTCOG's 2014 Cooperative Vehicle Procurement, the selected vendors will provide for the manufacturing and delivery of Americans with Disabilities Act (ADA) accessible transit vehicles.

Two vendors were selected for three vehicle types. National Bus Sales and Leasing, Inc., 15580 Hwy 114, Justin, Texas 76247, will provide the Glaval Entourage under the medium duty bus type for a two-year base contract that is not to exceed \$1,280,000. Creative Bus Sales, 3880 Valley View, Irving, Texas 75062, will provide the Mobility Ventures MV-1, under the small transit vehicle type and StarTrans Senator II, under the light duty transit bus type, for the two year base contract that is not to exceed \$4,430,000.

TRD-201403922

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: August 18, 2014



## Texas Board of Professional Geoscientists

### Notice of Public Hearings on Proposed Revisions to 22 TAC Chapters 850 and 851

The Texas Board of Professional Geoscientists (TBPG) will conduct public hearings to receive testimony regarding its four-year rules review and its proposed revisions to 22 Texas Administrative Code (TAC) Chapters 850 and 851.

The proposed revisions to Chapters 850 and 851 were published in the July 4, 2014, issue of the *Texas Register*.

The TBPG will hold public hearings on the proposed amendments and the four-year rules review in the following locations:

**Midland:** September 5, 2014, at 1:30 p.m. at Talon, LPE, 2901 State Hwy 349, Midland, Texas 79706

**Fort Worth:** September 8, 2014, at 6:00 p.m. in the Sid Richardson Building, Lecture Hall 1, 2950 W. Bowie Street, Fort Worth, Texas 76129

**Houston:** September 10, 2014, at 11:00 a.m., at AECOM, Westheimer I Training Room, 5444 Westheimer Rd., Houston, Texas 77056

**Corpus Christi:** September 12, 2014 at 10:00 a.m., at TCEQ Regional office, TAMU Campus, NRC Building, 6300 Ocean Drive, Conference Room 1003, Corpus Christi, Texas 78412

The hearings are structured for the receipt of oral or written comments by interested persons.

Written comments may be submitted at any time during the public comment period. Written comments should be directed to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, P.O. Box 13225, Austin, Texas 78711 or by e-mail to [chorton@tbpg.state.tx.us](mailto:chorton@tbpg.state.tx.us). All comments should reference "Public comments regarding proposed rules." The comment period closes October 2, 2014. Copies of the proposed rulemaking and details regarding the hearings and the four-year rules review can be obtained on the main page of the TBPG website at [www.tbpg.state.tx.us](http://www.tbpg.state.tx.us).

TRD-201403967

Charles Horton

Executive Director

Texas Board of Professional Geoscientists

Filed: August 20, 2014



### Public Notice - Deadline Extended for Public Comments

In the July 4, 2014, issue of the *Texas Register* (39 TexReg 5042), the Texas Board of Professional Geoscientists (TBPG) filed a proposed

rulemaking action in conjunction with its four-year rule review of 22 TAC Chapters 850 and 851.

The public comment period was originally set for a 30 day period, to end on August 4, 2014. This notice is to extend the public comment period through October 2, 2014.

Written comments pertaining to the proposed amendments and repeals should be directed to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower 1-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to [chorton@tbpg.state.tx.us](mailto:chorton@tbpg.state.tx.us). Copies of the proposed changes can be obtained on the main page of the TBPG website at [www.tbpg.state.tx.us](http://www.tbpg.state.tx.us). All comments should reference "Public comments regarding proposed rules." Please submit comments by October 2, 2014.

TRD-201403966

Charles Horton

Executive Director

Texas Board of Professional Geoscientists

Filed: August 20, 2014



## Public Utility Commission of Texas

### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on August 15, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Google Fiber Texas, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 42765.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Sunset Valley, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 42765.

TRD-201403935

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 19, 2014



### Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 15, 2014, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Vodafone US Inc. for a Service Provider Certificate of Operating Authority, Docket Number 42760.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant seeks to provide service throughout the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than September 5, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42760.

TRD-201403928

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 18, 2014



### Notice of Application for Amendment to a Service Provider Certificate of Operating Authority

On August 12, 2014, VCOM Solutions (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) number 60299. Applicant seeks approval for a change in certification type from resale-only to facilities-based and resale.

The Application: Application of VCOM Solutions for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42751.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than September 5, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42751.

TRD-201403851

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 15, 2014



### Notice of Application for Amendment to a Service Provider Certificate of Operating Authority

On August 15, 2014, Texas Hearing Services Corporation d/b/a Texas Hearing and Telephone (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) Number 60858. Applicant seeks approval for a corporate restructuring, whereby Awaz Telecom, LLC, a holding company, will acquire 100% of the shares of the issued and outstanding shares of capital stock of Applicant.

The Application: Application of Texas Hearing Services Corporation d/b/a Texas Hearing and Telephone for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42766.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than September 5, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42766.

TRD-201403926

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 18, 2014



Notice of Application to Relinquish a Service Provider  
Certificate of Operating Authority

On August 13, 2014, LBH, LLC d/b/a Cameron Communications, LLC (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60763. Applicant seeks to relinquish the certificate. Applicant stated that it never began providing service and has never had any customers in the State of Texas under SPCOA Number 60763.

The Application: Application of LBH, LLC d/b/a Cameron Communications, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 42754.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than September 5, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42754.

TRD-201403837  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 14, 2014



Notice of Petition to Issue a Certificate of Operating Authority  
and Rescind Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) a petition on August 7, 2014, for issuance of a certificate of operating authority and to rescind certificate of convenience and necessity.

Docket Style and Number: Southwestern Bell Telephone Company d/b/a AT&T Texas Petition to Issue a Certificate of Operating Authority and Rescind its Certificate of Convenience and Necessity, Docket Number 42741.

The Application: Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas) filed a petition to (1) reclassify itself as a deregulated company pursuant to Public Utility Regulatory Act §65.052(c) and §65.002(1); (2) issue a Certificate of Operating Authority consistent with Public Utility Regulatory Act §65.101(a) and (b); and (3) rescind its Certificate of Convenience and Necessity No. 40079.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than September 5, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 42741.

TRD-201403927

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: August 18, 2014



**Supreme Court of Texas**

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 14-9168

FINAL APPROVAL OF RULES AND FEES OF THE JUDICIAL  
BRANCH CERTIFICATION COMMISSION AND REPEAL OF  
RULES GOVERNING PROCESS SERVERS, GUARDIANS, AND  
COURT REPORTERS

**ORDERED that:**

1. Pursuant to the Act of May 2, 2013, 83rd Leg., R.S., ch. 42, §1.01 (SB 966), and Section 152.101 of the Government Code, the Supreme Court of Texas approves the following rules and fees for the Judicial Branch Certification Commission, effective September 1, 2014.
2. By order dated May 13, 2014, in Misc. Docket No. 14-9100, the Court approved rules and fees for the Judicial Branch Certification Commission and invited public comment. After the comment period expired, the Court made revisions to the rules. This order incorporates those revisions and contains the final version of the rules and fees.
3. Rule 14 of the Rules of Judicial Administration, the Rules Governing Guardianship Certification, and the Rules Governing Court Reporter Certification and Court Reporting Firm Registration are repealed effective September 1, 2014.
4. The Uniform Format Manual for Texas Reporters' Records and the Code of Professional Conduct for Certified Shorthand Reporters and Court Reporting Firms remain in effect.
5. 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*.

Dated: August 19th, 2014.

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Nathan L. Hecht, Chief Justice

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Paul W. Green, Justice

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Phil Johnson, Justice

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Don R. Willett, Justice

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Eva M. Guzman, Justice

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Debra H. Lehrmann, Justice

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Jeffrey S. Boyd, Justice

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John P. Devine, Justice

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Jeffrey V. Brown, Justice

## **RULES OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION**

### 1.0 General Provisions

1.1 Authority These rules are promulgated under Section 152.101 of the Government Code.

### 1.2 Definitions

The following words and terms, when used in these rules, have the following meanings, unless the context clearly indicates otherwise.

(a) Act means the Act of May 2, 2013, 83rd Leg., R.S., ch. 42, §1.01 (SB 966), which is codified in Chapters 151-157 of the Government Code.

(b) Advisory board means a board that is established by law or the Commission to advise the Commission on rules, policies, or technical matters.

(c) Applicant means any person seeking a certification, registration, or license from the Commission.

(d) Certification means a certification issued by the Commission. The term includes provisional certification.

(e) Commission means Texas Judicial Branch Certification Commission.

(f) Complainant means any person, including the Director, who has filed a complaint with the Commission against any person whose activities are subject to the Commission's jurisdiction.

(g) Director or Administrative Director means the Administrative Director of the Office of Court Administration of the Texas Judicial System, or the Director's designee.

(h) License means a license issued by the Commission.

(i) Office means the Office of Court Administration of the Texas Judicial System.

(j) Presiding officer means the Commission member designated by the Supreme Court under Section 152.056 of the Government Code.

(k) Registration means a registration issued by the Commission.

(l) Regulated person means a person who holds a certification, registration, or license issued by the Commission.

(m) Respondent means any person, regardless of whether the person is certified, registered, or licensed, who is charged with violating a law that establishes a regulatory program administered by the Commission, a rule adopted by the Commission, or an order issued by the Commission or the Director.

(n) Review committee means a committee of advisory board members appointed by the Commission to review complaints filed against a regulated person.

### 1.3 Program Fees

(a) Fees set by the Commission for each program are published on the Commission's website separately from these rules and must be paid as

prescribed on the website. The program fees include fees for initial applications, renewals, duplicate licenses, examinations, and any other fees specific to a particular program.

(b) All program fees are nonrefundable unless stated otherwise.

### 1.4 Counting Time

In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays must otherwise be counted for purposes of calculating time periods under these rules.

### 1.5 Access to Commission Records

As a judicial branch entity, the Commission is not a governmental body subject to the Public Information Act set forth in Chapter 552 of the Government Code. Public access to the Commission's records is governed either by Rule 12 of the Rules of Judicial Administration or by applicable statutory or common law. The Director is the Commission's records custodian.

### 2.0 Powers, Duties, and Responsibilities

#### 2.1 Powers and Duties of the Commission

(a) The Commission shall:

(1) administer and enforce the Act, these rules, and the standards or codes of ethics applicable to each profession regulated by the Commission;

(2) in consultation with appropriate advisory boards, develop and recommend rules to the Supreme Court;

(3) in consultation with appropriate advisory boards, develop and recommend to the Supreme Court a code of ethics for each profession regulated by the Commission;

(4) set fees in amounts reasonable and necessary to cover the costs of administering the programs or activities administered by the Commission subject to approval of the Supreme Court;

(5) in consultation with appropriate advisory boards, establish qualifications for certification, registration, and licensing; and

(6) approve curriculum for court reporter career schools and colleges and court reporter programs in technical institutes and public community colleges.

(b) The Commission may:

(1) require applicants to pass an examination and charge fees for the examination;

(2) require regulated persons to obtain continuing education and approve continuing education courses; and

(3) elect officers and appoint necessary committees.

#### 2.2 Commission Meetings

(a) Every meeting of the Commission must be open to the public as provided by the Commission's Public Meetings Policy.

(b) A quorum for the Commission is a majority of all the members of the Commission. When a quorum is present, a motion before the Commission is carried by an affirmative vote of the majority of the Commission members present that are participating in the vote.

(c) The presiding officer may limit the number and length of comments provided on any item on the agenda.

(d) The Commission must provide the public with a reasonable opportunity to appear before the Commission and speak on any issue under the Commission's jurisdiction. A person who wishes to speak at a Commission meeting must sign in and may speak at the designated time.

(e) The presiding officer or the presiding officer's designee may grant continuances with regard to hearings and other matters before the Commission.

### 2.3 Powers and Duties of the Administrative Director

(a) The Administrative Director must administer and enforce the Commission's programs and policies as provided by the Act and other applicable law, including, but not limited to:

(1) processing applications for and issuing certifications, registrations, and licenses;

(2) developing procedures and forms;

(3) conducting investigations;

(4) issuing cease and desist orders as provided by Section 153.003 of the Government Code;

(5) administering exams, including administering exams in conjunction with a person with whom the Commission contracts to develop and administer examinations;

(6) maintaining records pertaining to applicants and regulated persons; and

(7) performing any other duty assigned by the Commission or specified by law.

(b) The Administrative Director must supervise the Office's provision of support to the Commission under the administrative attachment required by Section 152.103 of the Government Code. The Administrative Director may delegate the powers and duties prescribed by law or these rules to staff of the Office after providing written notice of such delegation to the Commission.

(c) The Administrative Director may bring items to the Commission's attention for its consideration, including, but not limited to, proposals for new or amended rules and agenda items for Commission meetings.

### 2.4 Advisory Boards

(a) Advisory boards must advise the Commission on policy and regulated persons.

(b) Each advisory board must meet at least once each year and at the call of the presiding officer.

(c) Advisory boards must assist the Commission by developing and recommending rules to the Commission and may establish subcommittees to provide this assistance.

(d) Advisory boards must perform other duties as requested by the Commission or required by law.

(e) The purpose and membership of each advisory board is detailed in the provisions of the Act for each specific program regulated by the Commission. The Commission may establish other advisory boards. The following advisory boards are created by the Act:

(1) Court Reporters Certification Advisory Board;

(2) Guardianship Certification Advisory Board;

(3) Process Server Certification Advisory Board; and

(4) Licensed Court Interpreter Advisory Board.

## 3.0 Certification, Registration, and Licensing

### 3.1 Initial Applications

(a) All applications for certification, registration, and licensing must be submitted on forms published on the Commission's website and accompanied by the appropriate application fee. In appropriate circumstances, the Commission may require an applicant to submit information in addition to that called for on the application forms.

(b) An applicant must comply with submission requirements stated on the application form. Incomplete applications will not be processed.

(c) An applicant must provide the Commission with his or her Texas and national criminal history records by fingerprint search according to directions published on the Commission's website. The criminal history searches must be conducted no more than 90 days before an application is submitted.

### 3.2 Renewal Applications

(a) A person must not perform work requiring certification, registration, or a license under the Act with an expired certification, registration, or license.

(b) The Commission will notify a regulated person by email before the date that the person's certification, registration, or license is scheduled to expire. A regulated person's failure to receive a renewal notice from the Commission does not exempt the person from any requirement of these rules or of any other rules governing the person's profession.

(c) All certification, registration, and license renewal applications must be submitted on forms published on the Commission's website. A regulated person must comply with submission requirements stated on the renewal form. Incomplete applications will not be processed.

(d) The renewal application and all applicable fees are due 45 days prior to the expiration of the certification, registration, or license. An application is timely if it is postmarked on or before the due date. Failure to complete a renewal application at least 45 days prior to expiration may result in a lapse of certification, registration, or license.

(e) Any continuing education that is required to be fulfilled as part of the renewal application must be completed prior to the certification, registration, or license expiration date to avoid payment of a late renewal fee.

(f) Notwithstanding (b) through (e), a regulated person who fails to renew his or her certification, registration, or license in a timely manner because the person was on active duty in the United States armed forces serving outside this State is exempt from any increased renewal fee that the person would otherwise be required to pay for failing to renew in a timely manner.

(g) Notwithstanding (b) through (e):

(1) A regulated person who is a member of the state military forces or a reserve component of the armed forces of the United States, and who is ordered to active duty by the proper authority, is entitled to an extension of his or her certification, registration, or license period equal to the deployment period and an additional amount of time to complete any continuing education requirements and any other requirements related to the renewal of the person's certification, registration, or license.

(2) The individual must submit to the Director a written request, accompanied by a copy of the orders placing the person on active duty.

(3) The Director must make the extension based on information in the copy of the orders provided. The additional amount of time must be equal to the total number of months that the person serves on active duty.

(4) An individual making a request under this rule must notify the Director of any change in the length of deployment.

(5) A regulated person is exempt from any increased fee or other penalty for failing to renew the person's certification, registration, or license in a timely manner if the individual furnishes to the Commission satisfactory documentation that the individual failed to renew in a timely manner because the individual was on active duty in the United States armed forces serving outside this State.

(h) The Commission must refuse to accept a regulated person's application for renewal if the Commission receives notice of child support arrearages pursuant to Section 232.0135 of the Family Code. Upon receipt of further notice that the person has complied with Section 232.0135(b), the Commission must accept an application for renewal subject to all requirements of these rules.

### 3.3 Endorsement; Reciprocity

(a) The Commission may waive any prerequisite to obtaining a certification, registration, or license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a certification, registration, or license issued by another jurisdiction that has certification, registration, or licensing requirements substantially equivalent to those of this State.

(b) The Commission may waive any prerequisite to obtaining a certification, registration, or license for an applicant who holds a certification, registration, or license issued by another jurisdiction with which this State has a reciprocity agreement. Subject to the approval of the Supreme Court, the Commission may make an agreement with another state to allow for certification, registration, or licensing by reciprocity.

### 3.4 Alternative Application Procedure for Military Spouses

(a) This rule applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The Commission may issue a certification, registration, or license to an applicant described under (a) who:

(1) holds a current certification, registration, or license issued by another state that has requirements that are substantially equivalent to the requirements for the certification, registration, or license; or

(2) within the five years preceding the application date, held a certification, registration, or license in this State that expired while the applicant lived in another state for at least six months.

(c) The Commission may allow an applicant who meets the requirements of (b) to demonstrate competency by alternative methods or credentials in order to meet the requirements for obtaining a particular certification, registration, or license issued by the Commission. For purposes of this Section, the standard methods of demonstrating competency are the specific exam, education, and experience required to obtain a particular certification, registration, or license.

(d) In lieu of the standard methods of demonstrating competency for a particular certification, registration, or license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Commission:

(1) education;

(2) continuing education;

(3) examinations (written or skills);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods or credentials required by the Commission.

(e) The applicant must:

(1) submit an application and proof of the requirements under this rule and for that particular certification, registration, or license on a form and in a manner prescribed by the Commission; and

(2) be subject to the same criminal history background check required of the persons applying for that particular certification, registration, or license.

(f) A person who applies for a certification, registration, or license under this rule is exempt from paying an application fee.

(g) The Director may issue a license by endorsement under this rule to an applicant who meets the requirements of (b) in the same manner set forth in Section 51.404 of the Occupations Code.

### 3.5 Eligibility for Persons with Criminal History

(a) An initial or renewal application may be denied, and a regulated person may be disciplined, if the person's criminal history or other information indicates that the person lacks the honesty, trustworthiness, or integrity to hold the certification, registration, or license. After consultation with the appropriate advisory boards, the Commission will develop and publish on its website guidelines for each regulatory program listing the categories of crimes that are considered to indicate that a person lacks the honesty, trustworthiness, or integrity to hold the particular certification, registration, or license. The Director will determine whether an initial or renewal application will be denied under this rule using the guidelines developed by the Commission and the factors listed in (b). If the Director denies an application, the applicant may request that the Commission reconsider the decision under Rule 3.6.

(b) In making a determination under (a), the Commission or Director may consider:

(1) the nature and seriousness of the crime;

(2) the extent to which certification, registration, or licensing might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(3) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the occupation;

(4) the extent and nature of the person's past criminal activity;

(5) the age of the person when the crime was committed;

(6) the amount of time that has elapsed since the person's last criminal activity;

(7) the conduct and work activity of the person before and after the criminal activity;

(8) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(9) proof that the applicant:

(A) maintained a record of steady employment;

(B) supported his or her dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and



(10) any other evidence of the person's fitness, including, but not limited to, letters of recommendation.

(c) A person may request that the Commission, through the Director, issue a criminal history evaluation letter regarding the person's eligibility for certification or licensure under this rule.

(1) The person may request a criminal history evaluation letter if the person:

(A) is enrolled or is planning to enroll in an educational program that prepares a person for an initial certification or license or is planning to take an examination required by the Commission for an initial certification or license; and

(B) has reason to believe that the person is ineligible for certification or licensing due to a conviction or deferred adjudication for a felony or misdemeanor offense or other criminal history.

(2) The request must be in writing and must state the basis for the person's potential ineligibility. The requestor must provide the Commission with his or her criminal records pursuant to the fingerprinting requirements for the particular certification or licensing program. The Commission may request additional information from the requestor.

(3) If the Director determines that a ground for ineligibility does not exist, the Director must notify the requestor in writing of the Director's determination on each ground of potential ineligibility.

(4) If the Director determines that the requestor is ineligible, the Director must issue a letter setting out each basis for potential ineligibility and the Director's determination as to eligibility.

(5) The Director must provide notice under (c)(3) or issue a letter under (c)(4) not later than the 90th day after the date that the Commission receives the request.

(6) The Commission is not bound by the Director's determination if:

(A) the requestor fails to disclose known information that is relevant to the evaluation; or

(B) there is a change in the person's circumstances after the evaluation notice or letter is issued.

### 3.6 Denial of Application; Reconsideration

(a) Application Review. The Director must review each application and determine whether the applicant meets the Commission's qualifications for the particular certification, registration, or license. The Director must also determine whether the applicant meets the Commission's criminal history eligibility requirements. If a person who has applied to be a certified guardian does not clearly meet the experience or education requirements in these rules, the Director must consult with members of the Guardianship Certification Advisory Board before approving or denying the application.

(b) Denial of Application. The Director may deny an application only if the applicant fails to meet the qualifications set forth in these rules or the Commission's criminal history eligibility requirements. The Director must furnish to the applicant a written statement that succinctly states the reason for denying the application.

(c) Request for Reconsideration. Within 20 days of the date of the notice that the Director has denied an application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(d) Reconsideration Procedure. The Commission must reconsider the request at its next meeting and may allow the applicant or other witnesses to appear at the meeting and present sworn testimony. The Com-

mission may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(e) Commission Action on Request. After reconsidering a decision of the Director, the Commission may:

(1) affirm the Director's decision; or

(2) reverse the Director's decision.

(f) Final Decision. The Commission must notify the applicant in writing of its decision on reconsideration. The Commission's decision is final and may not be appealed.

### 3.7 Examination Security

(a) Except as provided in Rule 3.10, when an applicant must take an examination in order to obtain a certification or license, the applicant may only use methods of assistance that are available to, and authorized for, other persons taking the examination. A person who uses or provides unauthorized assistance in connection with an examination violates this rule. Conduct that violates this rule includes but is not limited to the following:

(1) obtaining or attempting to obtain from any source examination questions or answers for use by an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course;

(2) providing or attempting to provide examination questions or answers to an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course;

(3) presenting a falsified or fraudulent document to gain entry to an examination;

(4) presenting a falsified or fraudulent document concerning an individual's results from an examination;

(5) taking an examination for another person;

(6) as an applicant or prospective applicant, knowingly allowing another person to take an examination for the applicant or prospective applicant;

(7) while taking an examination, using any materials not authorized by the Commission or testing service for use in the examination, including but not limited to notes or study aides;

(8) bringing to the examination site or leaving the examination site with examination questions or answers obtained from the current examination or from previous examination attempts;

(9) while taking an examination, communicating with any person, other than an authorized representative of the Commission or testing service, about the examination; or

(10) for open book examinations, bringing any materials into the examination, including hand-written notes in approved reference materials, other than those materials approved by the Commission or testing service.

(b) The contents of any examination that is required for the issuance of a Commission certification or license are confidential.

(c) An applicant who cheats on an examination will be disqualified and may not take the examination again until two years have elapsed from the date of the examination at which the applicant was disqualified.

### 3.8 Examination Rescheduling

(a) A person may reschedule an examination to another regularly scheduled examination date at no charge if the person notifies the

Commission or vendor at least two days prior to the examination and complies with the instructions of the Commission or vendor.

(b) A person who reschedules an examination under this rule may apply the examination fee paid for the cancelled examination to the rescheduled examination.

### 3.9 Examination Fee Refund

(a) To obtain a refund of an examination fee, a person who is unable to take the examination must:

(1) if the examination is administered by a vendor, comply with the vendor's notice and documentation requirements; or

(2) if the examination is administered by the Commission, provide written notice to the Director not less than 10 days prior to the date of the examination or provide the Director, as soon as possible, with documentation of the person's inability to take the examination because of an emergency.

(b) A person seeking a refund must apply for the refund in writing within one year of the date that the person paid the fee. The person must, upon request, provide the Office additional information necessary to process the refund.

### 3.10 Access to Examinations and Examination on Religious Holy Days

(a) Reasonable accommodation for examinations will be made available as required by the Americans with Disabilities Act of 1990, Public Law 101-336. Reasonable accommodation means an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant's disability without doing any of the following:

(1) fundamentally altering the nature of the examination;

(2) fundamentally altering the Commission's ability to determine through the examination whether the applicant possesses the essential eligibility requirements;

(3) compromising the validity of the examination;

(4) compromising the security of the examination; or

(5) imposing an undue burden on the Commission or on the examination vendor.

(b) If an examination is scheduled on a date that is a religious holy day, a person whose religious beliefs prevent that person from taking an examination on such date will be permitted to take the examination on an alternate date. The alternate date must be a regularly scheduled examination date unless the person's religious beliefs prevent the person from taking the examination on such date.

(c) A person who needs a reasonable accommodation for an examination or who requests to take the examination on an alternate date must notify the Director or examination vendor, as applicable, of the request at least 10 days prior to the scheduled examination.

### 3.11 Examination Results

(a) Unless the examination is graded or reviewed by a testing service, not later than the 30th day after the date that a person takes an examination, the Commission must notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the Commission must notify the person of the results of the examination not later than the 30th day after the date that the Commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the Commission must notify the person of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the Commission must furnish the person with an analysis of the person's performance on the examination.

(d) Examination results are valid for one year from the date of the examination, unless stated otherwise in specific program statutes or rules.

### 3.12 Responsibilities of Regulated Persons

(a) A regulated person must comply with the rules for the program under which the person is regulated.

(b) A regulated person must respond to requests for information from the Commission or the Director pertaining to renewal of certification, registration, or licensure; complaints alleging misconduct by the regulated person; and investigative inquiries by the Commission or Director. The regulated person must respond to a request for information within the time prescribed in the request.

(c) A regulated person must provide the Commission with the person's name, business name, business address, home address, business and home telephone numbers, email address, and fax number, and must notify the Commission of any change in contact information within 30 days of the change. Failure to comply with this rule may result in disciplinary action.

(d) A regulated person who, after being certified, registered, or licensed, is convicted of any felony or misdemeanor offense must immediately notify the Commission of the conviction.

### 3.13 Voluntary Surrender of Certification, Registration, or License

(a) A regulated person may voluntarily surrender the person's certification, registration, or license. The surrender must be submitted to the Director on the form approved by the Commission, and the form must be completed fully. The Director may request additional information.

(b) A voluntary surrender is effective after the Director receives it, verifies that the form is complete, and changes the person's status on the Commission's website.

(c) The person must provide written notice of the voluntary surrender as required by the Director.

(d) The circumstances under which the certification, registration, or license is surrendered will be noted in the person's records with the Commission and will be taken into account if the person applies in the future. A voluntary surrender does not affect any disciplinary matters before the Commission at the time of surrender.

## 4.0 Continuing Education

### 4.1 Applicability

These rules establish continuing education requirements for each of the professions regulated by the Judicial Branch Certification Commission. Additional continuing education requirements may be found in the rules for each program.

### 4.2 Continuing education requirement

A regulated person must obtain the minimum number of hours of continuing education required by the rules for the person's particular program. The person must obtain the required hours within the prescribed time period.

### 4.3 Approval of continuing education courses

(a) Continuing education courses must be approved by the Commission. A continuing education course is an organized program of learn-

ing designed to increase or maintain the skills or competence of the regulated persons for whom it is intended. A continuing education course must be developed and presented by persons with education or experience in the subject matter of the course.

(b) The provider of a continuing education course may request approval of a course. To request approval of a course, a provider must file a completed application on the appropriate form published on the Commission's website.

(1) The application must be accompanied by an outline and materials that describe the course objectives and content, describe the teaching methods to be used, identify the presenters and provide their credentials, indicate the time allotted to each segment, and provide the date and location of the program.

(2) The course must comply with the course content requirements contained in the rules for the group of regulated persons to whom it will be offered.

(c) A regulated person may request approval of a continuing education course on the appropriate form published on the Commission's website.

(1) The person may request approval prior to the date that the course will be offered or at the time the person files a renewal application.

(2) The application must be accompanied by an outline and materials that describe the course content, identify the presenters, indicate the time allotted to each segment, and provide the date and location of the program.

(3) The course must comply with the course content requirements contained in the rules for the group of regulated persons to whom it will be or has been offered.

(d) The Director may approve or deny a request for approval of a continuing education course. Upon approval, the Director will determine the number of hours of continuing education for the course.

(e) The Commission will publish on its website a list of courses that are approved as continuing education.

(f) A continuing education provider whose course has been approved must retain participant course completion records for a period of three years after completion of the course. Upon request, a provider must provide information, including attendance records, to the Commission within 10 days of the request.

(g) A regulated person must obtain a certificate of attendance or other documentation from a continuing education course provider to prove the person's attendance or completion of all continuing education activity from the provider and submit the documentation to the Commission with the person's renewal application. The person must retain a copy of the documentation for a period of three years after completion of the course.

(h) A regulated person may appeal the Director's denial of a request for approval by submitting a written appeal to the Commission within 15 days of notification of the denial. The Commission must review the denial at its next regularly scheduled meeting. The regulated person will be notified of the Commission's decision not less than 15 days after the decision.

(i) The Commission, through the Director, may request additional information from a regulated person to verify the person's compliance with continuing education requirements.

(j) If a regulated person's certification or license expires and the person is permitted under these rules to renew late, the person must comply with the continuing education requirements for the person's profession.

The continuing education credit must be earned during the certification or license period preceding expiration, or within the appropriate late renewal period. Continuing education credit earned during the late renewal period may not be used to satisfy the continuing education for the person's subsequent renewal period.

(k) The following do not qualify as continuing education activities under these rules:

(1) attendance at, or participation in, professional or association business meetings, general sessions, or policy making sessions;

(2) service on a committee or council or as an officer in a professional organization;

(3) activities completed to satisfy the requirements of a disciplinary action; and

(4) any activity completed as ordered by a judicial officer.

#### 5.0. Commission Enforcement

5.1 Investigations The Commission, through the Director, may conduct investigations as necessary to enforce the laws administered by the Commission and these rules.

#### 5.2 Subpoenas

(a) The Commission may issue a subpoena as provided by this rule. No party, complainant, or other person may request that the Commission issue a subpoena.

(b) The Commission may request and, if necessary, compel by subpoena:

(1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of the Act, a law establishing a regulatory program administered by the Commission, a rule adopted under the Act, or an order issued by the Commission or Director; and

(2) the attendance of a witness for examination under oath.

(c) A subpoena under this rule may be issued throughout this State and may be served by any disinterested person designated by the Commission or the Director.

(d) The Commission, acting through the Attorney General, may bring an action to enforce a subpoena issued under this rule against a person who fails to comply with the subpoena.

(e) Venue for an action brought under this rule is in a district court in:

(1) Travis County; or

(2) any county in which the Commission may hold a hearing.

(f) The court must order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

#### 5.3 Cease and Desist Orders

The Director may issue a cease and desist order if the Director determines that the action is necessary to prevent a violation of:

(a) the Act;

(b) a law establishing a regulatory program administered by the Commission; or

(c) a rule adopted under the Act or order issued by the Commission or the Director.

#### 5.4 Administrative Sanctions-Denial, Revocation, Suspension, or Refusal to Renew; Reprimand; Probation

(a) The Commission may deny, revoke, suspend, or refuse to renew a certification, registration, or license or may reprimand a regulated person:

(1) for a violation of the Act, a law establishing a regulatory program administered by the Commission, a rule adopted under the Act, or an order issued by the Commission or Director; or

(2) based on the person's criminal history or other information as authorized by these rules.

(b) If the Commission revokes a certification, registration, or license, the Commission may state the length of the revocation in its order.

(c) Suspension.

(1) The Commission may suspend a certification, registration, or license:

(A) for a designated period of time, except that a court reporter's certification may not be suspended longer than 12 months;

(B) until the regulated person corrects the deficiencies that were the grounds for suspension; or

(C) until the regulated person complies with any conditions imposed by the Commission.

(2) A person who was suspended under (c)(1)(B) or (C) must apply for reinstatement.

(3) The Commission on its own motion may conduct a hearing to inquire into a suspension and may revoke the certification, registration, or license of a regulated person if it finds that the person has not corrected the deficiencies that were the grounds for the suspension or has not complied with the conditions imposed.

(d) The Commission may place on probation a person whose certification, registration, or license is suspended. If a certification, registration, or license suspension is probated, the Commission may require the person to:

(1) report regularly to the Commission on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the Commission; or

(3) complete professional education until the person attains a degree of skill satisfactory to the Commission in those areas that are the basis for the probation.

(e) The Commission must suspend a regulated person's certification, registration, or license pursuant to the provisions of Section 232.011 of the Family Code upon receipt of a final order issued under Chapter 232 of the Family Code. Pursuant to Section 232.011, the Commission must take such action without a hearing or additional review.

#### 5.5 Injunction

(a) The Commission may apply to a district court in any county for an injunction to restrain a violation of the Act or a rule adopted under the Act.

(b) At the request of the Commission, the Attorney General must initiate and conduct an action in a district court in the State's name to obtain an injunction under Section 153.005 of the Government Code.

(c) If the State prevails in a suit under Section 153.005, the Attorney General may recover on behalf of the State reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

(d) The Commission may also request that a court having jurisdiction over a guardian remove the guardian under Section 1203.052(b) of the Estates Code.

#### 5.6 Administrative Penalty and Administrative Sanction

(a) The Commission may impose an administrative penalty on a person regulated under the Act who violates the Act or a rule or standard adopted or order issued under the Act.

(b) A proceeding imposing an administrative penalty may be combined with a proceeding to impose an administrative sanction otherwise imposed under the Act.

#### 5.7 Amount of Penalty

(a) The amount of an administrative penalty may not exceed \$500 for each violation. Each day that a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty may be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) any previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

#### 5.8 Complaint Filing and Review; Report and Notice of Violation, Penalty, and Sanction

(a) A complaint against a regulated person may be filed by a person with personal knowledge of the alleged violation or by the Commission or a court of this State.

(b) A complainant, other than the Commission or a court, must use the complaint form provided on the Commission's website. The complaint must include the name and contact information of the complainant and the respondent, describe the factual basis for any allegations, and include any necessary documentation or other supporting materials or information. The complaint must be signed by the complainant and submitted to the Commission according to the instructions on the Commission's website.

(c) Upon receipt of a properly executed complaint, the Commission must send a copy of the complaint and any attachments to the respondent and direct the respondent to submit a written answer to the complaint under penalty of perjury, within 20 days of the date of the notice. The notice will be sent to the respondent's last known address in the Commission's records. If the respondent is a provisionally certified guardian, the Commission must also send a copy of the complaint and attachments to the guardian's supervisor. The respondent may request an extension of time to file an answer, but the request must be made before the expiration of the 20-day period.

(d) The Commission must refer a properly executed complaint and the results of any investigation conducted by the Commission to a review committee established by the Commission and comprised of members of the appropriate advisory board.

(1) The review committee must hold at least one meeting to review the complaint and answer, make the initial determination on whether a violation occurred, and recommend the imposition of a penalty, a sanction, or both.

(2) The review committee may hold additional meetings to consider a complaint or seek additional information, but it has no obligation to do so. The review committee is not an investigatory body and will generally render its recommendation to the Commission based on the submissions of the complainant and the respondent and the information gathered by an Office investigation.

(3) The complainant and the respondent may attend the review committee's meetings. The chair of the review committee may limit the length of comments made to the Committee.

(4) The review committee must make its recommendation to the Commission in writing and notify the respondent of its recommendation. If the review committee requests additional information, it may allow up to 30 days to provide the additional information.

(e) The Commission must review the determination and recommendation of the review committee, accept or revise the determination and recommendation as necessary, and give the respondent written notice by certified mail of the Commission's determination on whether a violation occurred and of each recommended penalty or sanction, if any. The notice will be sent to the respondent's last known address in the Commission's records.

(f) The notice required under (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of any recommended penalty;

(3) state any recommended sanction; and

(4) inform the respondent of the respondent's right to a hearing on the occurrence of the violation, the amount of the penalty, or the imposition of the sanction.

(g) The Director may dismiss complaints that clearly do not allege misconduct or that are not within the Commission's jurisdiction. The Director must inform the Commission of all dismissals made under this rule. A person who files a complaint that is dismissed under this rule may request in writing that the Commission reconsider the complaint.

#### 5.9 Penalty Paid, Sanction Accepted, or Hearing Requested

(a) Not later than the 20th day after the date that the respondent receives the notice sent under Rule 5.8(e), the respondent in writing may:

(1) accept the determination of the Commission and recommended penalty or sanction; or

(2) request a hearing on the occurrence of the violation, the imposition or amount of the penalty, or the imposition of the sanction.

(b) If the respondent accepts the determination and recommended penalty or sanction or fails to respond to the notice, the Commission by order must approve the determination and impose the recommended penalty or sanction.

#### 5.10 Notice; Hearing

(a) If the respondent requests a hearing, the Commission must give the parties written notice of the hearing that includes the time, place, legal authority, and jurisdiction under which the hearing is held and the laws and rules related to the violation.

(b) The presiding officer of the Commission may hold prehearing conferences.

(c) The respondent may appear, testify, present evidence, and respond to questions from the Commission at the hearing. The complainant may appear and may testify at the discretion of the prosecutor and the presiding officer.

(d) A party may appear by telephone or videoconference or present the testimony of a witness by telephone or videoconference according to the procedures below.

(1) A party may request to appear by telephone or to present the testimony of a witness by telephone, upon timely motion stating the reason for the request, containing the pertinent telephone number, and affirmatively stating that the proposed witness will be the same person who appears telephonically at the hearing. A party may request to appear by videoconference or to present the testimony of a witness by videoconference, upon timely motion stating the reason for the request and the city in which the party or witness will be located at the time of the proceeding. A timely motion for telephone or videoconference appearance will not be deemed granted unless granted by written order of the presiding officer.

(2) The motion is timely if it is filed no later than 10 days before the hearing. The presiding officer may grant an exception to this requirement if it clearly appears from specific facts shown in writing that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party.

(3) All substantive and procedural rights apply to telephone and videoconference proceedings, subject only to the limitations of the physical arrangement.

(4) Documentary evidence to be offered at a telephone or videoconference proceeding must be served on all parties and filed with the Commission at least seven days before the proceeding unless the presiding officer, by written order, amends the filing deadline. If a party intends to utilize documentary evidence with a witness at a telephone or videoconference proceeding, it is the offering party's responsibility to ensure that the witness has the document.

(5) For a telephone or videoconference proceeding, the following may be considered a failure to appear and grounds for default:

(A) failure to answer the telephone or videoconference line;

(B) failure to free the line for the proceeding; and

(C) failure to be ready to proceed as scheduled.

(e) At the request of the Commission, at least one member of the applicable advisory board review committee may attend the hearing to consult with the Commission on the reasons for the advisory board review committee's recommendations under Rule 5.8(d).

(f) At the hearing, the Commission must apply the general rules of evidence applicable in a district court, except that the Commission may admit and consider any information that the Commission determines is relevant, trustworthy, and necessary for a full and fair adjudication and determination of fact or law. The Commission may establish rules for the conduct of the hearing.

(g) The Commission will deliberate and announce its decision at the conclusion of the hearing. The Commission must make findings of fact and conclusions of law and must promptly issue an order on the occurrence of the violation, the amount of any penalty imposed, and the imposition of any sanction. The Commission must serve the respondent and the complainant with a copy of the order by certified mail with return receipt requested or by certified mail with electronic return receipt.

(h) The notice of the Commission's order under (g) must include a statement of the right of the respondent to appeal the order under Section 153.058 of the Government Code.

(i) The complainant and respondent are each responsible for their own costs of preparing for and attending the hearing.

(j) If the respondent fails to appear at the hearing:

(1) upon proof that notice of the hearing was given to the respondent, the Commission may proceed in the respondent's absence; and

(2) the factual allegations in the complaint may be deemed admitted.

(k) Proof that a document was sent to a party's last known address, as shown by the Commission's records, creates a rebuttable presumption that the document was received. The addressee's failure to claim a document that was properly addressed and served is insufficient to rebut the presumption.

#### 5.11 Options Following Decision: Pay, Accept, or Appeal

Not later than the 30th day after the date that the Commission issues an order imposing an administrative penalty or sanction, the respondent must:

(a) pay the penalty or accept the sanction; or

(b) file an appeal of the Commission's order contesting the occurrence of the violation, the imposition or amount of the penalty, or the imposition of the sanction.

#### 5.12 Collection of Penalty

(a) If the respondent does not pay the penalty and the enforcement of the penalty is not stayed, the Attorney General may sue to collect the penalty and may recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

(b) A penalty collected under these rules will be deposited in the state treasury in the general revenue fund.

#### 5.13 Appeal

(a) A person seeking to appeal an order that imposes a penalty or sanction must submit a written appeal of the order to the General Counsel of the Office within 30 days after the Commission's order is issued. The General Counsel must promptly forward the appeal to a special committee consisting of three Administrative Regional Presiding Judges.

(b) The committee will be chosen by the Presiding Judges, but the committee must not include the Presiding Judge for the administrative region in which the appellant resided at the time of the decision. If the alleged violation involves a certified guardian, the committee must consist of two Regional Presiding Judges and the Presiding Judge of the statutory probate courts.

(c) The General Counsel must notify the Commission of the filing of an appeal and, upon request, must make the appeal materials available to the Commission or its legal representative.

(d) The appeal must contain:

(1) a copy of the notice of the Commission's order with which the appellant is dissatisfied; and

(2) a statement succinctly explaining why the appellant is dissatisfied with the Commission's decision.

(e) The Office must adopt rules or policies to ensure that any Office employee who provides clerical, administrative, or other direct support to the Commission does not communicate regarding the substance of any appeal under this rule with any other Office employee who facilitates the appeal process under this rule. The rules or policies must also provide that Office employees may communicate regarding non-substantive aspects of appeals, such as to ensure the completeness and accuracy of appeal materials to be forwarded to the special committee.

(f) Upon receiving notice of an appeal of a disciplinary action imposing a penalty or sanction, the Commission must provide to the General Counsel, and the General Counsel must submit to the special commit-

tee, electronic or paper copies of the complaint and any original attachments, any written answer timely submitted by the appellant, notice of the Commission's decision imposing a penalty or sanction, and any other documents or written evidence considered by the Commission pertaining to the decision complained of on appeal. The Commission must provide a copy of these items to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.

(g) Absent approval by the special committee, submission of materials other than those described in (f) is prohibited. The special committee may, in its sole discretion, allow an appellant to submit additional written materials relating to the appeal. Otherwise, only the written materials described in (f) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.

(h) The special committee must consider the appeal under an abuse of discretion standard of review for all issues except issues involving questions of law. The standard of review for issues involving questions of law is *de novo*. Under either standard, the burden is on the appellant to establish that the Commission's decision was erroneous.

(i) The special committee may consider the appeal without a hearing and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion, conduct a hearing and allow testimony from the appellant or any other person with knowledge of the underlying facts relating to the disciplinary action complained of.

(j) The special committee may confer in writing with a certification, registration, or license holder who is in the same profession as the appellant if the special committee provides to the appellant:

(1) notice of the special committee's request for information; and

(2) a copy of the certification, registration, or license holder's response.

(k) If the special committee sustains the finding that a violation occurred, the special committee may:

(1) uphold or reduce the amount of any penalty and order the appellant to pay the full or reduced amount of the penalty; and

(2) uphold or reduce any sanction and order the imposition of the sanction.

(l) If the special committee does not sustain the finding that a violation occurred, the special committee must order that a penalty is not owed and that a sanction may not be imposed.

(m) If the appellant paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the special committee, the special committee must order that the appropriate amount plus accrued interest be remitted to the appellant not later than the 30th day after the date the judgment of the special committee becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest must be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(n) The special committee must notify the Commission and appellant in writing of its decision. No rehearing or further appeal is allowed.

#### 5.14 Disposition by Agreement

(a) Any disciplinary matter may be disposed of by agreement, unless precluded by law. The agreement must be in writing and may be in the form of a stipulation, a settlement agreement, or a consent order.

(b) The Commission may designate its presiding officer or the Director to adopt or reject an agreement.

(c) The agreement must:

- (1) include proposed findings of fact and conclusions of law; and
  - (2) be signed by all parties to the agreement and their representatives.
- (d) Upon receipt of the agreement, the Commission or the Director may:
- (1) adopt the agreement and issue a final order;
  - (2) reject the agreement and remand the disciplinary matter for a hearing before the Commission;
  - (3) reject the agreement and order further investigation by the Director; or
  - (4) take such other action as the Commission or the Director find just.

#### 5.15 Alternative Dispute Resolution

(a) In addition to the procedures under Rule 5.14, the Commission encourages the resolution and early settlement of all contested disciplinary matters through voluntary settlement procedures.

(b) At any time after the filing of a complaint against a regulated person, the Director may initiate a settlement conference on the Director's own motion or at the request of any party. Settlement conferences are voluntary.

(c) The complainant and the respondent are the parties in a settlement conference. The Commission (through one or more Commission members, Office staff, or counsel) may also participate as a party in a settlement conference at the sole option of the presiding officer.

(d) A settlement conference may be used to reach agreement about all or a portion of the ultimate issues in a disciplinary matter or to reach agreement about how to handle disputed matters. The parties may use a mediator for a settlement conference or conduct the settlement conference without a mediator.

(e) The complainant and the respondent may not bind the Commission to any resolution of a disciplinary matter pending before the Commission. The presiding officer may appoint one or more Commission members or staff to attend the settlement conference. The Commission representative must participate in the proceedings in an effort to resolve the dispute within the parameters of any instructions received from the Commission.

(f) In the event a settlement of some or all of the disputed issues is reached during the settlement conference, the Commission must review the terms of the settlement at the next regularly scheduled Commission meeting. The Commission may accept the settlement terms, reject the settlement terms and restore all proceedings on the disciplinary matter to the status quo as it existed immediately prior to the settlement conference, or refer the matter for further negotiation.

(g) The parties may agree to retain a mediator to assist with the settlement conference.

(1) The parties must notify the presiding officer in writing of their agreement to retain a mediator. That notice must include the name, address, and telephone number of the mediator selected; a statement that the parties have entered into an agreement with the mediator as to rate and method of his or her compensation; and an affirmation that the mediator is qualified to serve.

(2) Upon receipt of a properly filed notice under (1), the presiding officer will enter an order referring the case to the mediator.

(h) If the parties do not agree to a mediator, the presiding officer may appoint an individual to serve as mediator in the settlement conference.

(i) An individual appointed to serve as a mediator under (g) or (h) must meet the qualifications set forth in the Civil Practice and Remedies Code Section 154.052. Pursuant to Section 154.052(c) of the Code, an individual who has served as a judge in Texas may be appointed to serve as a mediator.

(j) The Commission will not pay any fees or costs associated with a settlement conference unless good cause is shown and the Commission and Office agree to do so prior to the settlement conference.

(k) All communications in the settlement conference between or among the parties, and between each party and mediator, if any, are confidential under the same terms as provided in Section 154.053 of the Civil Practice and Remedies Code. Information shared with the mediator in separate meetings will not be given to any other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator is not required to be provided to the other parties and will not be filed or become a record in the disciplinary proceedings. Notes taken during the settlement conference by the parties and the mediator must be destroyed at the end of the process.

(l) Any agreement reached by the parties will be reduced to writing and signed by the parties before the end of the settlement conference. These writings may be informal in nature. The parties may agree that the written agreement remain confidential if there is no requirement of law to the contrary. Any part of the agreement that may affect the disposition of the disciplinary proceeding (such as agreements concerning relevant facts) must be filed in the record of the disciplinary proceeding.

(m) If the parties use a mediator for the settlement conference, the mediator must maintain confidentiality in accordance with Section 2009.054 of the Government Code. The mediator may not communicate to the Commission matters discussed with the parties in the settlement conference. The mediator will report to the Commission in writing whether the settlement conference resulted in a settlement of the matter in dispute, or other stipulations or matters that the parties agreed be reported.

(n) Required Filings. The following documents must be filed with the Commission: any request for the appointment of a mediator, any objection to the referral of the matter to a settlement conference, any objection to the appointment of a mediator, any notice required to be given, any settlement agreement, any report prepared by the mediator, and any similar documents as may become necessary or appropriate in the course of the settlement conference.

#### 6.0. Court Reporters Certification and Shorthand Reporting Firms Registration

##### 6.1 Definitions

(a) Advisory Board means the Court Reporters Certification Advisory Board.

(b) Certification means a certification issued by the Supreme Court of Texas on the Commission's recommendation.

(c) Code of Professional Conduct means the Code of Professional Conduct for Certified Shorthand Reporters and Court Reporting Firms approved by the Supreme Court of Texas.

(d) Court reporter and shorthand reporter mean a person who engages in shorthand reporting.

(e) Court reporting and shorthand reporting mean the practice of shorthand reporting for use in litigation in the courts of this State by making a verbatim record of an oral court proceeding, deposition, or proceeding before a grand jury, referee, or court commissioner using written symbols in shorthand, machine shorthand, or oral stenography.

(f) Court reporting firm, shorthand reporting firm, and affiliate office mean an entity wholly or partly in the business of providing court reporting or other related services in this State. A court reporting firm, shorthand reporting firm, or affiliate office is considered to be providing court reporting or other related services in this State if:

(1) any act that constitutes a court reporting service or shorthand reporting service occurs wholly or partly in this State;

(2) the firm or affiliate office recruits a resident of this State through an intermediary located inside or outside of this State to provide court reporting services, shorthand reporting services, or other related services in this State; or

(3) the firm or affiliate office contracts with a resident of this State by mail or otherwise and either party is to perform court reporting services, shorthand reporting services, or other related services wholly or partly in this State.

(g) Official court reporter means the shorthand reporter appointed by a judge under Section 52.041 of the Government Code as the official court reporter for a particular court.

(h) Registration means a registration issued by the Commission.

(i) RPR means the Registered Professional Reporter certification issued by the National Court Reporters Association.

(j) Uniform Format Manual means the manual approved by the Supreme Court of Texas that governs the form of official reporters' records and freelance transcriptions.

## 6.2 Requirement of Certification or Registration

(a) A person may not engage in shorthand reporting in this State or be appointed as an official court reporter or deputy court reporter unless that person is certified as a shorthand reporter by the Supreme Court of Texas.

(1) A certification must be for one or more of the following methods of shorthand reporting:

(A) written shorthand;

(B) machine shorthand;

(C) oral stenography; or

(D) any other method of shorthand reporting authorized by the Supreme Court.

(2) A person may not assume or use the title or designation "court recorder," "court reporter" or "shorthand reporter," or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the person is a court reporter or shorthand reporter, unless the person is certified as a shorthand reporter by the Supreme Court of Texas. Nothing in this rule must be construed to either sanction or prohibit the use of electronic court recording equipment operated by a noncertified court reporter pursuant and according to rules adopted or approved by the Supreme Court of Texas.

(b) A court reporting firm and its affiliate offices must register with the Commission. Unless a firm and its affiliate offices are registered with the Commission, the firm must not:

(1) use the title or designation "court recording firm," "court reporting firm," or "shorthand reporting firm" or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the firm is a court reporting firm or shorthand reporting firm; or

(2) offer services as a court reporting firm or shorthand reporting firm, unless the firm and its affiliate offices are registered with the Commission.

(c) A certification or registration expires at 12:01 a.m. on January 1 following the second anniversary of the date on which it was issued unless the certification or registration is renewed before that time pursuant to Rule 6.3(d)(1). Thereafter, the certification or registration expires at 12:01 a.m. on each second January 1 unless renewed.

(d) These rules do not apply to:

(1) a party to the litigation involved, the party's attorney, or a full-time employee of either; or

(2) court reporting services performed outside of this State by a shorthand reporter who is not certified in this State for use in a court proceeding in this State, provided that the work resulting from those services is produced and billed wholly outside of this State.

(e) Subject to the requirements of Rule 6.4(d) and (e), nothing in these rules should be construed to prohibit the employment of a noncertified shorthand reporter until a certified shorthand reporter is available in the judicial district where services of a shorthand reporter are desired.

(f) To qualify for certification, a person must:

(1) satisfy the requirements of Section 3.0 of these rules;

(2) pass an examination as required by the Commission in one or more of the methods of shorthand reporting authorized by Rule 6.2(a)(1); and

(3) be a high school graduate or possess the GED equivalent.

(g) Examination procedures.

(1) To take an examination, an applicant for certification must file the required forms and pay the required fees according to the deadlines established by the Commission.

(2) Prior to or simultaneously with the submission of an applicant's application to take Part A of the examination, the applicant must submit a statement of proficiency.

(A) The statement of proficiency must be on the form provided by the Commission and must contain the certification of a court reporting school instructor.

(B) If the applicant attended and learned court reporting skills at a court reporting school, the statement of proficiency must be countersigned by the appropriate administrative officer of the school.

(C) The person making the certification required in (A) must certify that the applicant has satisfactorily passed at the rate of 95% accuracy at least two tests on new material of each of the following:

(i) five minutes of two-voice dictation of questions and answers given at 225 words per minute;

(ii) five minutes of dictation of a jury charge given at 200 words per minute; and

(iii) five minutes of dictation of selected literary material given at 180 words per minute.

(D) The tests required by (C) must be administered and graded by the person who certifies the applicant's statement of proficiency and must be taken by the method of shorthand reporting for which the applicant has applied for examination. The two tests must have been taken and passed no more than one year apart.

(E) The applicant may not be deemed eligible to take an examination until the Commission receives the statement of proficiency.

(F) If the Commission has on file a valid statement of proficiency for an applicant, the applicant is not required to file a new statement of proficiency. A statement of proficiency is valid for one year from the



date of the last proficiency test described in (C) and must be valid on the date of the examination for which the applicant has applied.

(G) In lieu of the statement of proficiency, an applicant who is certified as an RPR or pursuant to a national examination that the Commission determines is of equivalent or greater degree of difficulty than the RPR examination may submit a letter from the certifying organization.

(H) The letter submitted under (G) must:

- (i) be an original on the certifying organization's letterhead;
- (ii) state the certification that the applicant has attained and the date the certification expires; and
- (iii) attest that the applicant has passed the exam for the certification and is currently certified and in good standing.

(I) The national certification must be valid on the date of the Texas examination for which the applicant has applied.

(J) The letter submitted under (G) is valid until the next expiration date of the applicant's national certification.

(h) Each examination will be given in two parts to be designated Part A and Part B.

(1) Part A component.

(A) Part A will be composed of five minutes of two-voice dictation of questions and answers given at 225 words per minute, five minutes of dictation of a jury charge given at 200 words per minute, and five minutes of dictation of selected literary material given at 180 words per minute.

(B) Each applicant must personally take down the test and must reduce the takedown to writing.

(C) The minimum passing grade on each section of Part A is 95% accuracy. An error will be charged for:

- (i) each wrong word;
- (ii) each omitted word;
- (iii) each added word not dictated;
- (iv) each contraction where read as two words;
- (v) two words where read as a contraction;
- (vi) each misplaced word;
- (vii) each misplaced period that materially alters the sense of a group of words or a sentence;
- (viii) each misspelled word;
- (ix) each plural or singular if the opposite was dictated; and
- (x) each wrong number.

(D) Applicants may use a dictionary during Part A.

(E) Applicants will be allowed three hours to complete the transcription of Part A of the test. If time permits, an applicant may review his or her transcript but may use only the original takedown from which the transcript was prepared to review the transcript.

(2) Part B component.

(A) Part B of the test must consist of objective questions touching on elementary aspects of court reporting, spelling, and grammar and Texas rules and procedure.

(B) Applicants may not use a dictionary during Part B.

(C) The minimum passing grade on Part B is 75%.

(3) Notwithstanding Rule 3.11(d), an applicant who passes Part A or Part B of the examination but fails the other part will not be required to be reexamined on the part that the applicant passed.

(i) An applicant who fails an examination may request that the examination be regraded by sending a written request to the Commission office within 20 days of the date of notice that the applicant has failed the examination. If the examination is regraded, the Commission will inform the applicant of the results of the regrading. Upon receipt of the regrading results, the applicant may request a personal review of the examination with a member of the advisory board. The request for a personal review must be in writing and filed within twenty days of the notice of regrading results.

(j) The Commission must certify to the Supreme Court of Texas the names of applicants who have completed all application requirements and are determined on examination to be qualified in professional shorthand reporting. In its certification, the Commission must specify the method or methods of reporting used by each successful applicant in taking the examination.

(k) A person certified under Chapter 52 of the Government Code prior to September 1, 1983, may retain a general certification authorizing the person to use any method of shorthand reporting authorized in Rule 6.2(a)(1), provided that the person keeps the certification in continuous effect.

(l) To register, a court reporting firm or affiliate office must pay all required fees and register on a form provided by the Commission. The registration form must state whether any officers, directors, or managerial employees of the firm or affiliate office have been finally convicted of a felony or misdemeanor other than a minor traffic offense or juvenile offense.

(m) The Commission may:

(1) refuse to certify to the Supreme Court the application of a person who was finally convicted of an offense that directly relates to the duties and responsibilities of a certified court reporter as determined using the factors listed in Rule 3.5; or

(2) refuse to register a court reporting firm or affiliate office if an officer, director, or managerial employee of the firm or affiliate office was finally convicted of a felony or misdemeanor that directly relates to providing court reporting services as determined using the factors listed in Rule 3.5.

### 6.3 Renewal of Certification or Registration

(a) Notwithstanding Rule 3.2(b), not later than the 30th day before the date a court reporter's or court reporting firm's certification or registration is scheduled to expire, the Commission will notify the reporter or firm of the impending expiration at the reporter's or firm's last known address according to the Commission's records. Failure to receive the notice does not exempt a court reporter or a court reporting firm from any requirements of these rules.

(b) Nonrenewal due to student loan default.

(1) The Commission must not renew the certification of a certified shorthand reporter who is designated to be in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) under Section 57.491(c) of the Education Code unless the reporter presents to the Board a certificate issued by TGSLC certifying that:

(A) the reporter has entered a repayment agreement on the defaulted loan; or

(B) the reporter is not in default on a loan guaranteed by TGSLC.

(2) The Commission must not renew the certification of a certified shorthand reporter who is designated to be in default on a repayment agreement with TGSLC under Section 57.491(g) of the Education Code unless the reporter presents to the Commission a certificate issued by TGSLC certifying that:

(A) the reporter has entered another repayment agreement on the defaulted loan; or

(B) the reporter is not in default on a loan guaranteed by TGSLC or on a repayment agreement.

(3) The Commission must provide a certified shorthand reporter an opportunity for a hearing under the procedures set out in Rule 5.10 prior to taking action concerning nonrenewal of certification for default on a student loan.

(c) To qualify for renewal of certification or registration, a certified court reporter, court reporting firm, or affiliate office must pay all required fees, submit all required forms, and comply with renewal procedures. In addition, certified court reporters must comply with the Commission's continuing education requirements in Rules 4.1-4.3 and 6.6. An application for renewal must state:

(1) if the applicant is a court reporter, whether the applicant has been finally convicted of a criminal offense other than a minor traffic offense since the reporter's last certification;

(2) if the applicant is a court reporting firm or affiliate office, whether an officer, director, or managerial employee has been finally convicted of a criminal offense other than a minor traffic offense since the firm's or affiliate office's last registration; and

(3) if the applicant is a court reporter, whether the applicant has ever been the subject of a disciplinary action by a licensing authority in another jurisdiction requiring certification, registration, or licensure to provide court reporting services, and whether the applicant is the subject of a pending disciplinary action before the Commission, including actions in which the Commission imposed a sanction that has not been completed.

(d) Renewal before and after expiration.

(1) A person who is otherwise eligible to renew a certification or registration may renew an unexpired certification or registration by paying the required renewal fee and submitting the required forms to the Commission before the expiration of the certification or registration.

(2) A person whose certification or registration has expired may not engage in activities that require a certification or registration until the certification or registration has been renewed.

(3) A person whose certification or registration has been expired for less than one year may renew the certification or registration by paying to the Commission the appropriate renewal fee.

(4) A person whose certification or registration has been expired for one year or more may not renew the certification or registration. The person may obtain a new certification or registration by complying with the requirements and procedures for obtaining an original certification or registration, including the examination requirements.

(5) A person who was certified as a court reporter in this State, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certification without reexamination if the person:

(A) submits appropriate renewal forms and documentation showing that the person has complied with the continuing education requirements in the Commission's rules;

(B) pays the appropriate renewal fee;

(C) submits documentation from the other state indicating that the person is currently licensed, has been licensed for the two years immediately preceding the application for renewal in Texas, and is in good standing; and

(D) submits documentation from the person's employer showing that the person has been working for at least two consecutive years prior to the date of application in Texas.

(6) The documentation required under (d)(5)(D) must include the beginning date of the person's employment and must be original, notarized, and on the employer's letterhead. If the person has been employed by more than one employer during the two-year period, the person must submit documentation from each employer showing the beginning and ending date of the person's employment.

#### 6.4 Responsibilities of Certified Court Reporters

(a) A certified court reporter is entitled to use the title "Certified Shorthand Reporter" or the abbreviation "CSR." A certified shorthand reporter may administer oaths to witnesses anywhere in this State.

(b) The transcription of any proceeding and any other document certified by a certified shorthand reporter for use in litigation in the courts of this State must contain a signed certification in the form required by the Uniform Format Manual.

(c) A certification of a transcript of a court proceeding by an official court reporter must contain a signed certificate in the form required by the Uniform Format Manual.

(d) A noncertified shorthand reporter may report an oral deposition only if:

(1) the noncertified reporter delivers an affidavit to the parties or to their counsel present at the deposition stating that a certified shorthand reporter is not available; or

(2) the parties or their counsel stipulate on the record at the beginning of the deposition that a certified shorthand reporter is not available.

(e) A noncertified shorthand reporter who is employed when a certified shorthand reporter is not available must include with the certification of a transcription of a court proceeding an affidavit that no certified shorthand reporter was available to perform the duties of the court reporter.

(f) Official court reporters, deputy court reporters, and substitute court reporters must comply with the Act, Chapter 52 of the Government Code, and all applicable provisions of the Texas Rules of Appellate Procedure in conducting of the business of their offices.

#### 6.5 Enforcement

(a) After notice and an opportunity for a hearing under Rule 5.10, the Commission must reprimand, assess a reasonable fine against, or suspend, revoke, or refuse to renew a shorthand reporter's certification for:

(1) fraud or corruption;

(2) dishonesty;

(3) willful or negligent violation or failure of duty;

(4) incompetence;

(5) fraud or misrepresentation in obtaining certification;

(6) a final conviction of an offense that directly relates to the duties and responsibilities of a certified shorthand reporter, as determined using the factors listed in Rule 3.5;

(7) engaging in the practice of shorthand reporting using a method for which the reporter is not certified or while certification is suspended;

(8) unprofessional conduct, including but not limited to:

- (A) failing to deliver a transcript or statement of facts to a client or court in a timely manner as determined by statute, court order, or agreement;
- (B) producing an inaccurate transcript or statement of facts;
- (C) producing an incomplete transcript or statement of facts except upon order of a court, agreement of the parties, or request of a party;
- (D) failing to disclose as soon as practical to the parties or their attorneys existing or past financial, business, professional, family, or social relationships, including contracts for court reporting services, that might reasonably create an appearance of partiality;
- (E) advertising or representing falsely the qualifications of a certified shorthand reporter or that an unlicensed individual is a certified shorthand reporter;
- (F) failing to charge all parties or their attorneys to an action the same price for an original transcript or statement of facts and failing to charge all parties or their attorneys the same price for a copy of a transcript or statement of facts or for like services performed in an action;
- (G) failing to disclose in writing to all parties or their attorneys upon request at any time an itemization of all rates and charges to all parties or their attorneys;
- (H) reporting any proceeding if the reporter is related to a party or their attorney within the second degree by affinity or consanguinity unless:
  - (i) as soon as practicable, the reporter discloses the relationship in writing to all parties and the court; and
  - (ii) either
    - A. no objection to the use of the reporter on the grounds of the relationship is made by any party or the court within a reasonable period after the disclosure; or
    - B. the court enters an order finding that, under the circumstances, the relationship does not create an appearance of partiality and that good cause exists to permit use of the reporter;
- (I) reporting a proceeding if the reporter is financially interested in the action or is associated with a firm that is financially interested in the action;
- (J) failing to notify all parties or their attorneys of a request for a transcript or statement of facts, or any part thereof, in sufficient time for copies to be prepared and delivered simultaneously with the original;
- (K) going "off the record" during a deposition when not agreed to by all parties or their attorneys unless ordered to do so by the court;
- (L) giving, directly or indirectly, benefiting from, or being employed as a result of any gift, incentive, reward, or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$100 in the aggregate per recipient per year;
- (M) charging for a copy at a rate more than one-third the per page cost of the original and first copy; and
- (N) failing to comply with the requirements of the Uniform Format Manual for Texas Court Reporters;
- (9) entering into or providing services under a prohibited contract described by Section 154.115 of the Government Code;
- (10) committing any other act that violates Chapter 154 of the Government Code, a rule adopted under the Act, or a provision of the Code of Professional Conduct; or
- (11) other sufficient cause.
- (b) In this rule, an officer, director, or managerial employee of a shorthand reporting firm or affiliate office will be referred to as "a principal."

After notice and an opportunity for a hearing under Rule 5.10, the Commission may reprimand, assess a reasonable fine against, or suspend, revoke, or refuse to renew the registration of a shorthand reporting firm or affiliate office for:

- (1) fraud or corruption;
  - (2) dishonesty;
  - (3) conduct on the part of a principal if the principal orders, encourages, or permits conduct that the principal knows or should have known violates this chapter;
  - (4) failure of a principal to take reasonable remedial action to avoid or mitigate the consequences of conduct by a person who the principal knows or should have known violated this chapter and over whom the principal has direct supervisory authority;
  - (5) fraud or misrepresentation in obtaining registration;
  - (6) a final conviction of a principal of a felony or misdemeanor that directly relates to providing court reporting services, as determined under Rule 3.5;
  - (7) engaging the services of a reporter that the shorthand reporting firm or affiliate office knew or should have known was using a method for which the reporter is not certified;
  - (8) knowingly providing court reporting services while the shorthand reporting firm's or affiliate office's registration is suspended or engaging the services of a shorthand reporter whose certification was suspended if a principal knew or should have known of the suspension;
  - (9) unprofessional conduct, including a pattern of giving (directly or indirectly), benefiting from, or being employed as a result of giving any gift, incentive, reward, or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$100 in the aggregate for each recipient each year-provided, however, that nothing in this rule should be construed to define providing value-added business services, including long-term volume discounts, such as the pricing of products and services, as prohibited gifts, incentives, or rewards;
  - (10) entering into or providing services under a prohibited contract described by Section 154.115 of the Government Code;
  - (11) committing any other act that violates Chapter 154 of the Government Code, a rule adopted under the Act, or a provision of the Code of Professional Conduct; or
  - (12) other sufficient cause.
  - (c) When a certified shorthand reporter or court reporting firm reports an alleged violation to the Commission pursuant to the reporting obligation in the Code of Professional Conduct, the information must be provided in writing and must be signed by the person providing the information and accompanied by pertinent documentation, if any.
- 6.6 Continuing Education
- (a) A certified court reporter must complete at least 10 hours of approved continuing education during each certification period. The 10 hours must include a minimum of 2.5 hours in ethics, Texas rules, or both.
  - (b) The required hours must be earned prior to the expiration of the certified court reporter's certification period.
  - (c) Notwithstanding Rule 4.3(c)(1), a certified court reporter must submit requests for approval of continuing education by September 30 of the year that the reporter's certification expires.
  - (d) Continuing education may be earned by:

(1) verified attendance or participation in an approved program, activity, or course;

(2) verified personal preparation of educational presentations pertaining to the profession of court reporting or serving as an instructor, speaker, or panel member at an approved continuing education course; or

(3) writing articles pertaining to the court reporting profession that are published in a state or nationally recognized professional journal of court reporting or law-provided, however, that no more than 2.5 hours may be earned under this category during any one certification period.

(e) Credit earned under (d)(2) will be awarded as follows:

(1) for participation as an instructor in an approved continuing education program, the number of hours approved for attendees of the presentation; and

(2) for preparation time, up to 2.5 hours.

(f) A court reporter may earn preparation and teaching credit for instructing an approved continuing education course only one time per certification period.

(g) An article submitted under (d)(3) must be approved by the Director to receive continuing education credit. Credit will not be allowed for the same article published in more than one publication.

(h) All courses must be relevant to the needs of court reporters and the reporting service needs of users and must:

(1) contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the individual in the practice of shorthand reporting;

(2) include at least one subject that is directly related to the court reporter's ability to produce accurate and timely transcripts, such as:

(A) English, including grammar, linguistics, and transcript styles;

(B) medicine, including terminology, techniques, and concepts likely to be encountered during litigation;

(C) the legal system, including litigation procedures and substantive presentations on various specialties within the law;

(D) technology-related subjects, including terminology and concepts likely to be encountered during litigation (e.g., accident reconstruction) and technological developments in the field of court reporting (e.g., computer technology);

(E) transcript preparation; or

(F) business management, including financial issues, personnel issues, and time management.

(i) In addition to the activities listed in Rule 4.3(k), the following do not qualify as continuing education activities for certified court reporters under these rules:

(1) entertainment and recreation;

(2) tours or visiting exhibits;

(3) any function for which the court reporter receives remuneration as part of his or her regular employment;

(4) courses that emphasize nonverbal skills (e.g., golf, tennis, dancing, basket-weaving, CPR or first aid courses, floral design, etc.);

(5) any activity completed before the first renewal period for which the renewal applicant is required to obtain continuing education; and

(6) reading books or articles or submitting book reviews, article reviews, or tests (including those books and accompanying tests that are

part of the approved reading list of the National Court Reporters Association).

## 7.0 Guardianship Certification

### 7.1 Definitions

(a) Certified guardian means a person who is certified by the Commission to provide guardianship services in this State.

(b) Corporate fiduciary has the meaning assigned by Section 1002.007 of the Estates Code.

(c) Engaged in the business of providing guardianship services means to perform, offer to perform, or advertise the performance of guardianship services for compensation.

(d) Guardian has the meaning assigned by Section 1002.012 of the Estates Code.

(e) Guardianship program means a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.

(f) Guardianship services means conducting, performing, or administering the duties and powers prescribed by the Estates Code or under a court order in a guardianship matter.

(g) Incapacitated person has the meaning assigned by Section 1002.017 of the Estates Code.

(h) Minimum Standards for Guardianship Services means the Minimum Standards for Guardianship Services promulgated under Section 155.101 of the Government Code.

(i) Private professional guardian means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

(j) Provisionally certified guardian means a person who has received provisional certification to provide guardianship services in this State from the Commission.

(k) Supervisor means a certified guardian who has notified the Commission that he or she will be responsible for overseeing an applicant for provisional certification.

(l) Volunteer means a person who renders guardianship services on behalf of a guardianship program or on behalf of the Department of Aging and Disability Services and who does not receive compensation that exceeds the authorized expenses that the person incurs in performing those services.

(m) Ward has the meaning assigned by Section 1002.030 of the Estates Code.

### 7.2 Requirement of Certification

(a) To provide guardianship services in this State, the following individuals must be certified by the Commission:

(1) an individual who is a private professional guardian;

(2) an individual who will provide those services to a ward of a private professional guardian on the guardian's behalf;

(3) an individual, other than a volunteer, who will provide those services, or other services under Section 161.114, Human Resources Code, to a ward of a guardianship program or the Department of Aging and Disability Services on the program's or department's behalf; and

(4) a person who at any time supervises direct providers of guardianship services, unless the person is exempt under Section 155.001(6) of the Government Code.

- (b) To be eligible for certification, a person must:
- (1) satisfy the requirements of Section 3.0 of these rules;
  - (2) be at least 21 years of age;
  - (3) be a high school graduate or possess the GED equivalent;
  - (4) have two years of relevant work experience related to guardianship or have met the following education or training requirements:
    - (A) a minimum of a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in a field related to guardianship; or
    - (B) completion of a course curriculum or training specifically related to guardianship approved by the Commission;
  - (5) successfully pass, after no more than four exam attempts, an examination approved by the Commission that covers Texas law and procedure related to guardianship and any other examination required and approved by the Commission testing knowledge of guardianship issues;
  - (6) attest under penalty of perjury whether he or she has ever been adjudged guilty of, or entered a plea of guilty or no contest in return for a grant of deferred adjudication with respect to, any felony or misdemeanor offense, which will be considered using the factors listed in Rule 3.5; and
  - (7) attest under penalty of perjury whether he or she:
    - (A) has ever been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion;
    - (B) has ever been found civilly liable or settled a claim in an action, including but not limited to a surcharge action, that involved allegations of fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion on the applicant's part;
    - (C) has ever been denied certification or had his or her certification revoked or suspended in Texas or any other jurisdiction that requires certification, registration, or licensure to provide guardianship services; or
    - (D) has ever surrendered his or her certification in Texas or any other jurisdiction that requires certification, registration, or licensure to provide guardianship certification.
- (c) If any of the circumstances described in (b)(6) or (7) exist, the applicant must describe the circumstances with particularity and provide any related documentation requested by the Commission.
- (d) Examination.
- (1) An individual who has failed the exam four times is not eligible for certification unless the individual petitions the Commission in writing for permission to take the exam again. The petition must set out in detail all facts that support the request, demonstrate that the individual has completed all other requirements for certification except for passing the exam, and demonstrate that no other impediments to certification exist.
  - (2) The Commission must consider the petition at its next regularly scheduled meeting and determine, without a formal hearing, whether permission to take the exam again will be granted or denied. The Commission may impose conditions to granting permission, including requiring the petitioner to provide additional information or complete specified continuing education prior to taking the exam again. If an

individual fails or refuses to strictly and completely comply with the conditions specified by the Commission, permission to take the exam again will be denied.

(3) An individual may petition the Commission only one time for permission to take the exam following four unsuccessful attempts. An individual who is granted permission to take the exam again and who fails the exam again is not eligible for certification. If the Commission denies permission to take the exam again, the individual is not eligible for certification.

(4) The decision of the Commission is final and is not subject to appeal, reconsideration, or any further action.

(e) Notwithstanding Rule 7.2(a), an individual who must be certified but does not meet the requirements for certification under Rule 7.2(b) may provide guardianship services in this State if the person obtains provisional certification pursuant to Rule 7.4.

(f) Notwithstanding any other provision of these rules: (1) pursuant to Section 1104.253 of the Estates Code, a family member or friend of an incapacitated person is not required to be certified under these rules to serve as the person's guardian; and

(2) an employee of the United States Veterans Administration appointed to serve as a guardian for an incapacitated person under Section 1002.017(3) of the Estates Code is not required to be certified under these rules to serve as the person's guardian.

(g) Upon certification, the certified guardian will be issued a certificate, which will be valid for two years from the date of issuance. New certificates will be issued for successive two-year periods upon timely and satisfactory completion of the renewal process.

(h) A certified guardian may use the designation "TxCG" to indicate that the guardian is certified by the Commission. Provisionally certified guardians may not use such designation.

### 7.3 Responsibilities of Certified Guardians; Reporting Requirements

(a) Standards and Rules. A certified guardian must comply with these rules and with the Minimum Standards for the Provision of Guardianship Services adopted by the Commission.

(b) Notice to Commission. A certified guardian must immediately notify the Commission if:

(1) the guardian is indicted for, formally charged with, adjudged guilty of, or enters a plea of no contest in return for a grant of deferred adjudication with respect to any felony or misdemeanor offense;

(2) any proceeding listed in Rule 7.2(b)(7) is initiated;

(3) events or circumstances would require any changes to the attestation required by Rule 7.2(b)(7); or

(4) the guardian is removed as a guardian under Chapter 1203 of the Estates Code.

(c) Notice from Commission. If the Commission receives notice of any of the items in (b) in any manner other than from the certified guardian, the Director will contact the certified guardian regarding the notice by first class mail. Notice from the Director on behalf of the Commission is deemed given when sent to the certified guardian at the last home address on file in the Commission's records.

(d) Documents filed with court. Each document prepared by or on behalf of a certified guardian and filed with a court must include the certified guardian's certification number.

(e) Not later than January 31 of each year, each guardianship program must provide to the Commission the following information for the preceding year:

(1) the number of wards served by the guardianship program reported by county in which the application to create a guardianship for the ward was filed, and the total number of wards served by the guardianship program;

(2) the name, business address, and business telephone number of each individual employed by or volunteering or contracting with the guardianship program to provide guardianship services to a ward or proposed ward of the program;

(3) the name of each county in which an individual described in (2) provides or is authorized to provide guardianship services;

(4) the total amount of money received from the State of Texas for the provision of guardianship services; and

(5) the amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources.

(f) Not later than January 31 of each year, each private professional guardian must provide to the Commission the following information for the preceding year:

(1) the number of wards served by the private professional guardian reported by county in which the application to create a guardianship for a ward was filed and the total number of wards served by the private professional guardian, including the name of each ward and the docket number and court having jurisdiction of the guardianship;

(2) the aggregate fair market value of the property of all wards that was managed by the private professional guardian;

(3) the name, business address, and business telephone number of each individual who provided guardianship services to a ward of a private professional guardian on behalf of the private professional guardian;

(4) the total amount of money received from the State of Texas for the provision of guardianship services;

(5) the amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources;

(6) whether the private professional guardian was removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, the style of the suit, the docket number, and the court having jurisdiction over the proceeding;

(7) reaffirmation of Rule 7.2(b)(6) and (7); and

(8) a copy of the private professional guardian's application for a certificate of registration with each county clerk required by Section 1104.302 of the Estates Code.

(g) Not later than January 31 of each year, the Department of Aging and Disability Services Guardianship Program must provide to the Commission a statement containing:

(1) the name, address, and telephone number of each department employee who is or will be providing guardianship services to a ward or proposed ward on behalf of the department; and

(2) the name of each county in which each employee named in (1) is providing or is authorized to provide those services.

(h) Information that must be submitted under (e), (f), and (g) must be submitted on appropriate forms and in the manner determined by the Commission.

#### 7.4 Provisional Certification

(a) Application for provisional certification. An individual who does not meet the requirements for certification in Rule 7.2(b)(4) and (5) may apply for provisional certification in writing on the forms provided by the Commission. An applicant for provisional certification must identify the applicant's supervisor on the application form. The supervisor must sign the application form.

(b) Requirements for provisional certification. To be eligible for provisional certification, an applicant must meet all requirements in Rule 7.2(b)(1)-(3), (b)(6)-(7), and (c). Provisional certification expires on the second anniversary of the date the certificate is issued.

(c) Responsibilities of provisionally certified guardian.

(1) A provisionally certified guardian may provide guardianship services in this State only under the supervision of a certified guardian supervisor. In order to maintain provisional certification, a provisionally certified guardian must have a certified guardian supervisor, even if the provisionally certified guardian is not currently providing guardianship services.

(2) A provisionally certified guardian must comply with these rules and with the Minimum Standards for Guardianship Services.

(3) Notice to Commission. A provisionally certified guardian must immediately notify the Commission if:

(A) the provisionally certified guardian obtains a different supervisor or is without a supervisor;

(B) the provisionally certified guardian is indicted for, formally charged with, adjudged guilty of, or enters a plea of no contest in return for a grant of deferred adjudication with respect to any felony or misdemeanor offense;

(C) any proceeding listed in Rule 7.2(b)(7) is initiated;

(D) events or circumstances would require any changes to the attestation required by Rule 7.2(b)(7); or

(E) the provisionally certified guardian is removed as a guardian under Chapter 1203 of the Estates Code.

(4) Documents filed with court. Each document prepared by or on behalf of a provisionally certified guardian and filed with a court must include the provisionally certified guardian's certification number and the name and certification number of his or her supervisor.

(5) A provisionally certified guardian must comply with the continuing education requirements in Rules 4.1-4.3 and 7.7. A provisionally certified guardian, when he or she meets the qualifications for certification, must submit documentation as described in Rule 4.3(g) with his or her application for certification.

(d) Responsibilities of supervisor.

(1) A supervisor must:

(A) assume primary responsibility for guiding the provisionally certified guardian's work and for supervising, generally and directly, as necessary, the quality of the provisionally certified guardian's work;

(B) meet with each provisionally certified guardian at least once every two weeks, with at least one of these meetings being face-to-face each month;

(C) assist the provisionally certified guardian in activities to the extent that the supervisor considers it necessary and appropriate;

(D) ensure that the provisionally certified guardian is familiar with the provisions of these rules and the Minimum Standards for Guardianship Services; and

(E) monitor the provisionally certified guardian's compliance with these rules and the Minimum Standards for Guardianship Services.

(2) A supervisor may not supervise more provisionally certified guardians than a reasonably prudent supervisor operating under substantially similar circumstances would supervise at one time.

(3) A supervisor whose certification expires, is revoked, or is suspended, or who voluntarily surrenders his or her certification, may not continue as a supervisor and must notify all provisionally certified guardians under that person's supervision that the person may not continue as a supervisor.

(4) A supervisor must immediately notify the Commission, or cause notice to be sent to the Commission, if the supervisor ceases to supervise a provisionally certified guardian.

(5) A supervisor may not:

(A) be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to a person whom he or she is supervising; or

(B) be an employee of or under the employment supervision of a person whom he or she is supervising.

(e) Notice from Commission. If the Commission receives notice from the supervisor under (d)(4), or receives notice of any of the items in (c)(3) in any manner other than from the provisionally certified guardian, the Director, on behalf of the Commission, will contact the provisionally certified guardian regarding the notification by first class mail. Notice from the Director on behalf of the Commission is deemed given when sent to the provisionally certified guardian at the last home address on file in the Commission's records.

(f) Prohibition on representation as a certified guardian. The supervisor and provisionally certified guardian may not state, represent, or imply that the provisionally certified guardian is a certified guardian.

(g) Expiration of provisional certification.

(1) A provisionally certified guardian may be provisionally certified for only one two-year period unless a waiver is approved by the Commission. For a provisionally certified guardian, a waiver may only be granted by the Commission before the expiration of the two-year period. For a formerly certified guardian whose certification expired or was surrendered unrelated to discipline, the Commission may grant a new provisional certification to allow the individual to work while pursuing certification again. It is the responsibility of the provisionally certified guardian to contact the Director regarding any questions or concerns about the expiration of provisional certification, requirements for full certification, or requesting a waiver.

(A) To request a waiver from the Commission, the provisionally certified guardian must send a written request to the Director. The request must include the reasons for seeking the waiver, the time period of the extension, and verification of attendance at Commission-approved continuing education during the provisional certification period. The provisionally certified guardian may include information in support of his or her request for a waiver, such as a letter of support from the designated guardian supervisor. If the provisionally certified guardian has not yet passed the required exam or completed required continuing education, the provisionally certified guardian must include in a request for a waiver the details of his or her plan for completion of these requirements and the amount of time necessary to do so.

(B) The Commission will consider the request at a regularly scheduled Commission meeting. The request must be received by the Director not less than 30 days prior to the next scheduled meeting of the Commission. If a request for waiver is not received in time to be heard at

a regularly scheduled meeting before the provisional certification expires, the request will not be considered.

(2) Upon expiration of a provisionally certified guardian's certification, the guardian must immediately provide written notice of the expiration to each court in which the guardian has been appointed pursuant to Section 1101.151 or Section 1101.152 of the Estates Code and, if the guardian provides guardianship services on behalf of the Department of Aging and Disability Services or a guardianship program, to each of those organizations on whose behalf the guardian provides guardianship services.

(h) If a provisionally certified guardian applies to be a certified guardian within one year of obtaining provisional certification, the applicant need not submit a new criminal history record.

#### 7.5 Renewal of Certification

(a) A renewal application and all applicable fees are due 45 days prior to the expiration of the certification. An application is timely if it is postmarked on or before the due date. Failure to complete a renewal application at least 45 days prior to expiration may result in a lapse of certification.

(b) To be eligible for renewal, the certified guardian must:

(1) pay all required fees;

(2) apply within the required time;

(3) comply with Rule 7.2(b)(6)-(7); and

(4) meet the continuing education requirements in Rules 4.1-4.3 and 7.7.

#### 7.6 Enforcement

(a) After notice and an opportunity for a hearing under Rule 5.10, the Commission may deny, suspend, or revoke certification or provisional certification; issue a public or private reprimand; or impose other disciplinary action, if the applicant, certified guardian, or provisionally certified guardian has:

(1) failed to comply with any rule applicable to certified guardians or provisionally certified guardians;

(2) failed to comply with any of the Minimum Standards for the Provision of Guardianship Services;

(3) failed to pay any applicable fee established by the Commission;

(4) failed to meet the requirements for certification, provisional certification, or renewal established by the Commission;

(5) falsely represented or misstated any material fact to the Commission;

(6) been adjudged guilty of or entered a plea of guilty or no contest in return for a grant of deferred adjudication to any felony or misdemeanor offense, and the factors listed in Rule 3.5 weigh in favor of disciplinary action;

(7) been found civilly liable or settled a claim in an action, including but not limited to a surcharge action, that involved fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion;

(8) been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion;

(9) been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party;

(10) failed to notify the Commission of a violation of any of the provisions set forth in Rule 7.2(b)(6)-(7); or

(11) engaged in conduct that poses a substantial threat to the well-being of a ward or the ward's estate.

(b) The Commission may suspend or revoke certification or provisional certification if the certificate was granted:

(1) contrary to these rules and the requirements for certification or provisional certification; or

(2) to an individual who is not eligible to acquire a certificate or provisional certificate or who has made any false representations or misstatement of material fact to the Commission.

(c) If the respondent in a complaint or enforcement proceeding is a provisionally certified guardian, all notices sent to the respondent under Rule 5.10 will be copied to his or her designated certified guardian supervisor.

### 7.7 Continuing Education

(a) A certified guardian must complete at least 12 hours of approved continuing education during each certification period. The 12 hours must include a minimum of two hours of ethics and one hour of legislative update. In this rule, the term "certified guardian" includes a provisionally certified guardian.

(b) The required hours must be earned prior to the expiration of the certified guardian's certification period.

(c) A certified guardian may carry forward for the following certification period not more than four regular continuing education hours, not including ethics or legislative update hours, which were earned in excess of the 12 hours used to satisfy the continuing education requirements of the immediately previous certification period. Ethics hours and legislative update hours may not be carried forward from one certification period to another certification period even if the hours were earned in excess of the minimum requirements for ethics and legislative update hours.

(d) A continuing education activity for a certified guardian must be an organized program of learning dealing with matters that are directly related to the guardianship profession, the services guardians provide, and the legal process involved in guardianship proceedings. A continuing education activity should increase participants' understanding of the Texas judicial system, the responsibilities of a certified guardian, and the certified guardian's impact on the judicial process and the public.

(e) Continuing education activities for certified guardians must include one or more of the following subjects:

(1) guardianships;

(2) trust administration;

(3) powers of attorney;

(4) mental or physical health or geriatric health;

(5) ethics for guardians, including cooperation with lawyers, judges, and fellow guardians and courtesy to all litigants;

(6) Texas statutes, rules, and case law relevant to the guardianship profession;

(7) the role and responsibilities of the certified guardian under the Estates Code, rules adopted by the Supreme Court relating to guardian-

ship certification, and the Minimum Standards for the Provision of Guardianship Services adopted by the Commission; and

(8) management issues, including financial planning and accounting.

(f) A certified guardian may request up to six hours of continuing education credit during each two-year certification period for teaching courses, speaking at seminars, or authoring books or articles related to the subject matter specified in (e). The certified guardian must submit an application for teaching credit on a form provided by the Commission. Credit for preparation and presentation may be provided on the basis of hour-for-hour credit for each hour spent preparing the article or book or making the presentation.

## 8.0 Process Server Certification

### 8.1 Definitions

Certified process server means a person who is certified by the Commission to serve process statewide.

### 8.2 Initial certification requirement

(a) A person seeking statewide certification to serve process must file with the Commission an application, sworn or under penalty of perjury, in the form prescribed by the Commission.

(b) An application must comply with the requirements of Rule 3.1 and also contain a statement indicating whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude. The Commission or Director may deny certification to an applicant convicted of a felony or of a misdemeanor involving moral turpitude. If an applicant's criminal history reflects that the applicant was charged with a felony or a misdemeanor involving moral turpitude and the charges resulted in an outcome other than acquittal or conviction (such as pretrial diversion, probation, deferred adjudication, community supervision, or similar result), the Commission or Director may consider the applicant's criminal history using the factors listed in Rule 3.5 in determining whether the application should be granted.

(c) The application must include a certificate from the director of a civil process service course, approved by the Commission for certification in every state court, stating that the applicant has completed the approved course within the prior year for initial certification. The applicant bears the burden of establishing that he or she has completed within the prior year a course approved by the Commission for certification in every state court.

(d) Applications will be reviewed and either approved or rejected for good cause stated. In appropriate circumstances, the Commission or Director may approve applications on a conditional or probationary basis.

(e) Certification is effective for three years from the last day of the month that the certification issues, unless it is revoked or suspended under these rules.

### 8.3 Renewal of certification

(a) To renew a certification, a process server must timely submit to the Commission a renewal application, including a current criminal history statement and all applicable fees, and complete the continuing education requirements in Rules 4.1-4.3 and 8.5.

(b) The renewal application and all applicable fees are due 45 days prior to the expiration of the certification. An application is timely if it is postmarked on or before the due date. Failure to complete a renewal application at least 45 days prior to expiration may result in a lapse of certification.

(c) A certified process server whose certification expires between September 1, 2014 and August 31, 2017 must, before renewing the



certification, provide the Commission with his or her Texas and national criminal history records by having his or her fingerprints submitted according to directions published on the Commission's website. The Texas and national criminal history searches must be conducted no earlier than 90 days preceding the date the renewal application is submitted.

#### 8.4 Enforcement

After notice and hearing under Rule 5.10, the Commission may revoke, suspend, or refuse to renew any certification issued under Rule 8.2; issue a letter of reprimand to a certified process server; or impose an administrative penalty on a certified process server for:

- (a) conviction of a felony offense or of a misdemeanor offense involving moral turpitude, as determined using Rule 3.5; or
- (b) other good cause as determined by the Commission.

#### 8.5 Continuing Education

(a) To renew certification, a certified process server must establish that all required continuing education has been completed. Rules 4.1-4.3 supplement this rule and establish additional requirements for continuing education.

(b) A certified process server must complete at least 12 hours of approved continuing education during the process server's three-year certification period. For process servers who are already certified on the effective date of these rules, the three-year requirement begins with the process server's next three-year certification period.

(c) A continuing education activity for a certified process server must be an organized program of learning dealing with matters that are directly related to service of process. A continuing education activity should increase participants' understanding of the Texas judicial system, the responsibilities of a certified process server, and the certified process server's impact on the judicial process and the public.

#### 9.0 Licensed Court Interpreters

##### 9.1 Definitions

(a) A Basic Designation permits the interpreter to interpret court proceedings in justice courts and municipal courts that are not municipal courts of record, other than a proceeding before the court in which the judge is acting as a magistrate.

(b) Dishonorable means lacking in integrity, indicating an intent to deceive or take unfair advantage of another person, or bringing disrepute to the profession of court interpretation.

(c) Licensed court interpreter means a person who is licensed by the Commission to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English.

(d) A Master Designation permits the interpreter to interpret court proceedings in all courts in this State, including justice courts and municipal courts.

(e) Unethical means conduct that does not conform to generally accepted standards of conduct for professional court interpreters.

##### 9.2 Licensing requirement

(a) The Commission must issue a court interpreter license to a person who:

- (1) satisfies the requirements of Section 3.0 of these rules;
- (2) prior to filing an application with the Commission, satisfactorily completes a Commission-approved orientation course of at least six hours;

(3) satisfies the examination requirements of Rule 9.3; and

(4) completes all requirements, including satisfying the examination requirements within one year of the date of the application.

(b) A license issued under this rule is valid for one year from the date of issuance and must have a language endorsement for each language that the applicant will interpret.

##### 9.3 Examination

(a) Each applicant must pass all parts of a Commission approved language examination for each language that the applicant will interpret.

(b) An applicant must pass the written examination with a score of at least 80%.

(c) An applicant must pass all three parts of the oral examination according to the following:

(1) An applicant scoring at least 60% on each part of the oral examination is eligible for a Basic Designation license.

(2) An applicant scoring at least 70% on each part of the oral examination is eligible for a Master Designation license.

(d) An applicant taking an examination must comply with the Commission's examination requirements under Rules 3.7-3.9.

(e) An applicant who fails an examination may apply for reexamination at a scheduled examination held at least six months after the date the individual failed the original examination.

##### 9.4 Renewal

(a) To renew a license, a court interpreter must timely submit to the Commission a renewal application and all applicable fees and complete the continuing education requirements in Rules 4.1-4.3 and 9.7.

(b) The renewal application and all applicable fees are due 45 days prior to the expiration of the license. An application is timely if it is post-marked on or before the due date. A licensed court interpreter's failure to receive a renewal notice from the Commission does not exempt the interpreter from any requirements of these rules or of other rules governing the profession.

(c) A person whose license has been expired for one year or less may renew the license by paying to the Commission the appropriate renewal fee for late renewals.

(d) A licensed court interpreter whose license expires between September 1, 2014 and August 31, 2015 must, before renewing the license, provide the Commission with his or her Texas and national criminal history records by having his or her fingerprints submitted according to directions published on the Commission's website. The Texas and national criminal history searches must be conducted no earlier than 90 days preceding the date the renewal application is submitted.

##### 9.5 Responsibilities of Licensed Court Interpreters

(a) A licensed court interpreter must include his or her name and license number on all official correspondence and on all contracts and invoices for court interpreter services.

(b) A licensed court interpreter must present his or her court interpreter license upon the request of a court or an officer of the court.

##### 9.6 Enforcement

(a) After notice and an opportunity for a hearing under Rule 5.10, the Commission may deny, revoke, suspend, or refuse to renew a license or reprimand a licensed court interpreter on finding that the person:

- (1) made a material misstatement in an application for a license;

(2) disregarded or violated Chapter 157 of the Government Code, or a rule adopted under Chapter 157;

(3) engaged in dishonorable or unethical conduct likely to deceive, defraud, or harm the public or a person for whom the interpreter interprets; or

(4) was finally convicted of a crime that indicates the person lacks the honesty, trustworthiness, or integrity to hold the license, as determined using Rule 3.5.

(b) The Commission may reissue a license to an individual whose license has been revoked if the individual applies in writing to the Commission and shows good cause to justify reissuance of the license.

(c) The Commission may assess an administrative penalty under Chapter 153 of the Government Code against a person who violates Chapter 157 of the Code or a rule adopted under that chapter.

#### 9.7 Continuing Education

(a) To renew a license, a licensed court interpreter must complete eight hours of approved continuing education in courses approved by the Commission, including two hours of instruction in ethics.

(b) Except as provided by (c), the continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(c) A licensed court interpreter may carry forward to the next certification period up to four continuing education hours, but ethics credit may not be carried forward.

(d) A licensed court interpreter may not receive continuing education credit for attending the same course more than once within the same license period.

(e) Notwithstanding Rule 4.3(g), a licensed court interpreter must retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensed court interpreter, the Commission may examine the licensed court interpreter's records to determine compliance with this requirement.

(f) To be approved, a continuing education course must be dedicated to instruction in one or more of the following topics:

- (1) law and rules affecting the practice of a licensed court interpreter;
- (2) ethics;
- (3) practice topics, such as etiquette, modes, vocabulary, technology, transcription, translation, grammar and spelling, and voice training; or
- (4) business practices.

#### FEES OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION

##### Certified Court Reporters and Court Reporting Firms

(a) Applicants for Certification and Certified Reporters.

(1) Certification Application Fee. Each applicant must submit a certification fee of \$85 with the completed application.

(2) Examination Fee. Each applicant who is taking the certification examination must submit an examination fee of \$75 for Part B, \$125 for Part A, or \$190 for Parts A and B combined by the date established by the Commission.

(3) Examination Late Fee. The late fee that must be paid by an applicant whose application to take the examination is late according to the deadlines established by the Commission is \$25.

(4) Renewal Fee (Before Expiration of Certification). Each certified court reporter must submit a renewal fee of \$200 on or before the expiration date of the certification. If this fee is not timely paid, the certification will expire pursuant to Rule 6.3.

(5) Renewal Fee (Expired for Ninety Days or Less). A person whose certification has been expired for 90 days or less may renew the certification by paying a renewal fee of \$300.

(6) Renewal Fee (Expired More than Ninety Days but Less than One Year). A person whose certification has been expired for more than 90 days but less than one year may renew the certification by paying a renewal fee of \$400.

(7) Recertification Fee (Moved to Another State). A person who was certified in this State, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certification without reexamination by paying a fee of \$400.

(8) Subscription Fee. With each fee required by (a)(4)-(7), a person must pay an additional, subscription fee of \$10 to fund a common Internet licensing system pursuant to Section 2054.2591 of the Government Code.

(9) Regrading Fee. A person who requests that an examination be regraded must pay a regrading fee of \$35.

(10) Replacement Fees. A person who requests a replacement for the person's certificate must pay a fee of \$15. A person who requests a replacement for the person's ID card must pay a fee of \$5.

(b) Court Reporting Firms.

(1) Registration Fee. Each registrant must submit a registration fee of \$200 along with the completed registration form.

(2) Renewal Fee (Before Expiration of Registration). Each registered court reporting firm and affiliate office must submit a renewal fee of \$200 on or before the expiration date of the registration. If this fee is not timely paid, the registration will expire pursuant to Rule 6.3.

(3) Renewal Fee (Expired for Ninety Days or Less). A firm whose registration has been expired for 90 days or less may renew the registration by paying a renewal fee of \$300.

(4) Renewal Fee (Expired More than Ninety Days but Less than One Year). A firm whose registration has been expired for more than 90 days but less than one year may renew the registration by paying a renewal fee of \$400.

(5) Replacement Fee. A firm that requests a replacement registration certificate must pay a fee of \$15.

(6) Subscription Fee. With each fee required by (b)(2)-(4), a person must pay an additional, subscription fee of \$12 to fund a common Internet licensing system pursuant to Section 2054.2591 of the Government Code.

##### Certified Guardians

(a) Application fee-\$25 (An employee of the Texas Department of Aging and Disability Services who is applying for certification to provide guardianship services to a ward of the Department is exempt from payment of this fee.)

(b) Exam fee (initial)-\$175 (This fee must be paid separately from all other fees by the date established in the exam schedule.)

(c) Exam fee (retake)-\$175 (This fee must be paid separately from all other fees by the date established in the exam schedule.)

(d) Renewal fee-\$25 (An employee of the Texas Department of Aging and Disability Services who is applying for renewal of certification to provide guardianship services to a ward of the Department is exempt from payment of this fee.)

(e) Late fee-\$75

(f) Replacement fee-\$5

Certified Process Servers

(a) Application fee-\$225

(b) Renewal fee-\$225

(c) Late fee (for late renewals, in addition to renewal fee)-\$110

(d) Subscription fee to accompany each initial or renewal application, to fund participation in a common Internet licensing system under Section 2054.2591 of the Government Code-\$5

(e) Replacement fee-\$5

Licensed Court Interpreters

(a) Application fee-\$75

(b) Renewal application fee-\$50

(c) Upgrade to Master application fee-\$25

(d) Additional endorsement fee-\$25

(e) Replacement license fee-\$5

(f) Written examination fee-\$100

(g) Oral examination fee-\$300

(h) Renewal Fee (Expired for Ninety Days or Less). A person whose license has been expired for 90 days or less may renew the certification by paying a renewal fee of \$75.

(i) Renewal Fee (Expired More than Ninety Days but Less Than One Year). A person whose license has been expired for more than 90 days but less than one year may renew the certification by paying a renewal fee of \$100.

TRD-201403968

Martha Newton

Rules Attorney

Supreme Court of Texas

Filed: August 20, 2014



## Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Live Oak 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. The TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

**Current Project:** Live Oak County; TxDOT CSJ No.: 1516GWEST.

Scope: Provide engineering/design services to

1. Rehabilitate & mark runway, taxiway, and hangar access taxiway
2. Reconstruct/repair apron

3. Construct hangar access taxiway

4. Upgrade electrical vault equipment/regulators

5. Replace MIRLS, PAPI-2 Runway 13-31

6. Install power supply for lighted windcone

The HUB goal for the design of the current project is 0%. The goal will be re-set for the construction phase. TxDOT Project Manager is Eusebio Torres.

The following is a listing of proposed projects at the Live Oak 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: Extend and mark runway, MIRLS, taxiways, relocate PAPI-2.

Live Oak 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 "Live Oak 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 September 23, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of 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 for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager.

TRD-201403969  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: August 20, 2014



### Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Fayette 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. The TxDOT Aviation Division will solicit and receive qualifications for professional aviation engineering design services for the current project as described below.

**Current Project:** Fayette County; TxDOT CSJ No.: 1513LAGRA.

Scope: Provide engineering/design services to:

1. Construct T-hangar (8 units)
2. Construct 2 - box hangars and hangar taxiway/apron
3. Rehabilitate & mark parallel Taxiway, Runway 16-34, apron and hangar access taxiway
4. Replace lighting vault
5. Replace MIRLS
6. Replace rotating beacon
7. Update airfield signage
8. Install wildlife fencing
9. Evaluate TSS penetrations

The DBE goal for the design of the current project is 5%. The goal will be re-set for the construction phase. TxDOT Project Manager is Paul Slusser.

The following is a listing of proposed projects at the Fayette Regional Air Center 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: Rehabilitate taxiway pavement, expand apron, construct hangar, remove TSS penetrations.

Fayette 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 "Fayette Regional Air Center." 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:**

**FIVE** completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 30, 2014, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of 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 for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Paul Slusser, Project Manager.

TRD-201403970  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: August 20, 2014



### **Texas Water Development Board**

Applications for August 21, 2014

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21744, a request from the Hidalgo County Drainage District No. 1, 902 N. Doolittle Rd., Edinburg, Texas 78542, received March 31, 2014, for a \$5,599,008 grant from the Water Loan Assistance Fund to finance design and engineering cost of a multi-phase drainage project for Hidalgo and Willacy Counties and authorize the transfer of funds from the Water Assistance Fund to the Water Loan Assistance Fund.

Project ID #62619, a request from Derby, Ing., P.O. Box 721025, McAllen, Texas 78504, received August 30, 2013, for financial assistance in the amount of \$54,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance planning and design costs associated with upgrades to the existing water system.

TRD-201403831

Les Trobman

General Counsel

Texas Water Development Board

Filed: August 13, 2014

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**Workforce Solutions Upper Rio Grande Development Board**

Request for Proposals

PY14-RFP-200-524

Release Date

Monday, August 18, 2014, 1:00 p.m. MST

Respondents' Conference

Tuesday, August 26, 2014, 10:30 a.m. MST

Notice of Intent to Bid

Thursday, August 28, 2014, 5:00 p.m. MST

**SUBMISSION DEADLINE**

Wednesday, September 17, 2014, 6:00 p.m. MST

The Innovative Science, Technology, Engineering and Mathematics (STEM) Program is a creative way to encourage middle school

and high school youth to develop innovative solutions to a variety of challenges and opportunities using an engaging approach. This program will highlight the creative critical thinking, problem solving, entrepreneurship, marketing, role model and communications still inherent in the region's middle school and high school youth. Workforce Solutions Upper Rio Grande is seeking to contract with an individual or organization to provide and deliver STEM Project Management Services. The Project Manager will be Responsible for:

- Fundraising for STEM YOUTH CAREER FAIR, which match or exceed, workforce investment funds;

- Develop, engage and track a STEM partner list that includes, but not limited to, public and private middle and high schools, universities and community colleges, targeted STEM industry private sector companies, community agencies and financial institutions;

- Project plan development, project management and oversight and concluding STEM Youth Career Fair;

- Develop and monitor collaborative partnership target industry engagement list;

- Facilitate efforts to align with Workforce Solutions Upper Rio Youth program;

- Develop and present progress report presentations to key stakeholders and workforce staff;

- Provide an Innovative model, to include innovative strategies and/or approaches.

Download RFP at: <http://www.urgjobs.com/wp-content/uploads/2014/04/PY14RFP200524InnovativeSTEMPM.pdf>

TRD-201403929

Joseph Sapien

Project Manager

Workforce Solutions Upper Rio Grande Development Board

Filed: August 18, 2014

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# Open Meetings

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

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

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

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

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

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

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

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

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

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

## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “39 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 39 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

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**\*Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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