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# TEXAS REGISTER

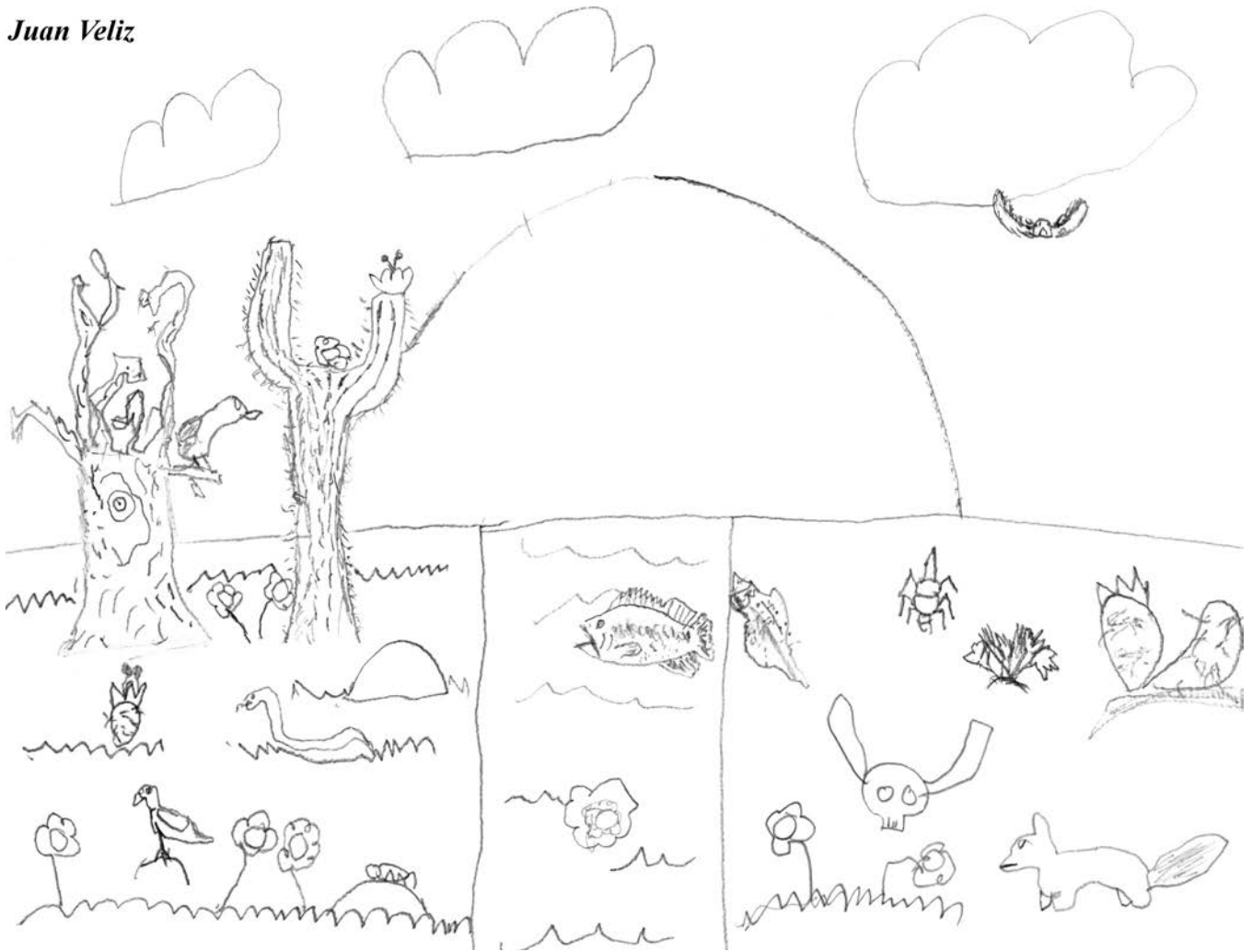
Volume 39 Number 40

October 3, 2014

Pages 7831 - : 238

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*Juan Veliz*



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

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

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

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

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

# TEXAS REGISTER

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

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

**Secretary of State –**  
Nandita Berry

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Leti Benavides  
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Deana Lackey  
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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.

# THE GOVERNOR

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

## Appointments

### Appointments for August 6, 2014

Appointed to the Brazos Valley Regional Review Committee for a term to expire at the pleasure of the Governor, Benjamin Henry Leman of Iola (replacing Gail Sowell of Anderson).

### Appointments for August 8, 2014

Appointed to the Texas Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 2016, Ann M. Hart of Austin (replacing Nyria Melchor of Plano whose term expired).

Appointed to the Texas Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 2016, Pamela Rollins of Dallas (Dr. Rollins is being reappointed).

Appointed to the Texas Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 2016, Stephanie Sokolosky of Harlingen (Dr. Sokolosky is being reappointed).

### Appointments for August 13, 2014

Appointed to the Golden Crescent Regional Review Committee for a term to expire at the pleasure of the Governor, Allen L. Barnes of Gonzales (replacing David L. Huseman of Gonzales).

Appointed to the Golden Crescent Regional Review Committee for a term to expire at the pleasure of the Governor, Robert Alan Logan of Gonzales (replacing Mary Anne MacLean of Gonzales).

### Appointments for August 15, 2014

Promoted to the rank of Major General in Headquarters, Texas State Guard, Austin, Texas with all rights, privileges and emoluments appertaining to this office, effective September 1, 2014, Gerald R. Betty of Austin.

Appointed to the Texas Holocaust and Genocide Commission for a term to expire February 1, 2015, Alia D. Garcia Ureste of El Paso (replacing David Alex Schulz of San Antonio who resigned).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2015, Manda Lee-Waldrep Hall of Austin (replacing Barbara L. Fountain of Leander who no longer qualifies).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2017, Alferma Giles of Sugar Land (replacing LaShonda Y. Brown of Missouri City who resigned).

### Appointments for August 19, 2014

Appointed as Commander of the Texas State Guard, effective September 1, 2014, for a term at the pleasure of the Governor, Gerald R. "Jake" Betty of College Station (replacing Manuel A. "Tony" Rodriguez of Gatesville).

### Appointments for August 25, 2014

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2019, Robert J. "Bob" Waller of Kerrville (replacing Brian Wright of Center Point who resigned).

Appointed to the Texas Economic Development Corporation for a term to expire at the pleasure of the Governor, David Cabrales of Dallas (replacing Marc A. Farmer of Lubbock).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2019, David King of Nacogdoches (Mr. King is being reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2019, Joseph Anderson, II of Lufkin (Mr. Anderson is being reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2019, Thomas R. "Tom" Murphy of Crockett (replacing Alfred Chavira of Jacksonville whose term expired).

### Appointments for August 29, 2014

Appointed to the Texas Medical Board, effective September 1, 2014, for a term to expire April 13, 2017, John Robert Guerra of Mission (replacing Irvin E. Zeitler, Jr. of Paint Rock who resigned).

Designating Michael R. Arambula as presiding officer of the Texas Medical Board, effective September 1, 2014, for a term to expire at the pleasure of the Governor. Dr. Arambula is replacing Irvin E. Zeitler, Jr. of Paint Rock as presiding officer.

Appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2017, Larry Don Miles of Amarillo (replacing Thomas Mechler of Amarillo who resigned).

### Appointments for September 3, 2014

Appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2015, Denise Oncken of Houston (replacing John M. Bradley of Georgetown who resigned).

Designating Robb David Catalano as presiding officer of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire at the pleasure of the Governor. Judge Catalano is replacing John M. Bradley of Georgetown as presiding officer.

Appointed to the Hidalgo County Regional Mobility Authority for a term to expire February 1, 2016, Rance G. "Randy" Sweeten of McAllen (replacing Dennis Bureson of Mission whose term expired).

Appointed to the Gulf Coast and Atlantic States Regional Task Force for a term to expire August 26, 2016, W. Nim Kidd of New Braunfels (Mr. Kidd is being reappointed).

Appointed to the Gulf Coast and Atlantic States Regional Task Force for a term to expire August 26, 2016, Heather Hill of Austin (replacing Joshua Havens of Austin).

Appointed to the Juvenile Justice Advisory Board for a term to expire at the pleasure of the Governor, Randall D. "Randy" Williams of Abilene (replacing Jerry V. Bigham of Canyon who resigned).

Appointed to the Texas Judicial Council for a term to expire June 30, 2017, Carlos Z. Amaral of Plano (replacing Virgil Justice of Kerrville who resigned).

Appointed to the Texas Violent Gang Task Force for a term to expire at the pleasure of the Governor, Roberto C. "Robert" Ornelas of Brownsville (replacing Ronald Lara of Mountain City who resigned).

Appointed to the Texas Violent Gang Task Force for a term to expire at the pleasure of the Governor, Jordan Lee Roberts of Lubbock (replacing Rodney R. Rodriguez of Lubbock who is deceased).

Appointed to the Texas Violent Gang Task Force for a term to expire at the pleasure of the Governor, Ronald Mora of San Antonio (replacing Roger Lozano who resigned).

Appointed to the State Commission on Judicial Conduct for a term to expire November 19, 2019, David M. Russell of Dripping Springs (replacing Karry Kay Matson of Georgetown whose term expired).

#### **Appointments for September 5, 2014**

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2017, Nelson H. Balido of San Antonio (Mr. Balido is being reappointed).

Appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2019, Tivy Lynn Whitlock of San Antonio (replacing Joseph Gutheinz, Jr. of Pearland who resigned).

Appointed as the Texas State Historian for a term to expire two years from the date of his honoring ceremony, John W. "Bill" O'Neal of Carthage (Mr. O'Neal is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2019, Penny C. Carpenter of Silverton (Ms. Carpenter is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2019, Cole Camp of Amarillo (Mr. Camp is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors for a term to expire August 11, 2019, Stephen A. Thornhill of Denison (replacing Clyde M. Siebman of Pottsboro whose term expired).

Appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2015, Aureka C. Sanders of Desoto (replacing Berkley Dyer of Austin who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2015, Roxanne M. Schroeder of Colleyville (replacing Richard L. Beard of Mesquite who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2017, D. Bailey Wynne of Dallas (replacing Danny Ken McCoy of Corsicana who resigned).

#### **Appointments for September 16, 2014**

Appointed to the Texas Board of Occupational Therapy Examiners for a term to expire February 1, 2015, Sally W. Harris of Houston (replacing Angela Sieffert of Dallas who resigned).

Appointed to the Texas Lottery Commission for a term to expire February 1, 2019, John W. Townes, III of Granbury (replacing Katie Stavino of The Woodlands who resigned).

Appointed to the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2017, Michael P.

"Mike" Hanley of Leander (replacing Cindy Phillips Finley of Lubbock who resigned).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2018, Annette P. Raggette of Austin (replacing Ruthie Burrus of Austin who resigned).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2019, Janet Hall of Georgetown (Ms. Hall is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2016, Brian L. Eisenrich of Plano (replacing Joe D. Campos of Dallas whose term has expired).

Appointed to the State Board of Veterinary Medical Examiners for a term to expire August 26, 2015, Keith A. Pardue of Austin (replacing Mamie Salazar-Harper of El Paso who resigned).

#### **Appointments for September 22, 2014**

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2017, Shawn P. Saladin of Edinburg (replacing Connie F. Sefcik-Kennedy of Austin who resigned).

Appointed to the Brazos Valley Regional Review Committee for a term to expire at the pleasure of the Governor, Jan A. Roe of Franklin (replacing Dean Player of Hilltop Lakes).

#### **Appointments for September 23, 2014**

Promoted to the rank of Major General in Headquarters, Texas State Guard, Austin, Texas, with all rights, privileges and emoluments appertaining to this office, Robert J. Bodisch, Sr.

Rick Perry, Governor

TRD-201404549



#### **Proclamation 41-3385**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a special election held on August 5, 2014, electing The Honorable Brandon Creighton to serve as State Senator in District No. 4, resulted in a vacancy occurring on Tuesday, August 26, 2014, in Texas House District No. 16, which consists of a part of Montgomery County; and

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

WHEREAS, Section 203.004 of the Texas Election Code requires the special election to be held on the first uniform date occurring on or after the 36th day after the date the special election is ordered; and

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

WHEREAS, Tuesday, November 4, 2014, is the first uniform election date occurring on or after the 36th day after the date the special election is ordered;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in House District No. 16 on Tuesday, November 4, 2014, for the purpose of electing a state representative to serve out the unexpired term of The Honorable Brandon Creighton.



Candidates who wish to have their names placed on the special election ballot must file their applications with the secretary of state no later than 5:00 p.m. on September 19, 2014.

Early voting by personal appearance shall begin on Monday, October 20, 2014, in accordance with Section 85.001(a) of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judge of Montgomery County, and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election

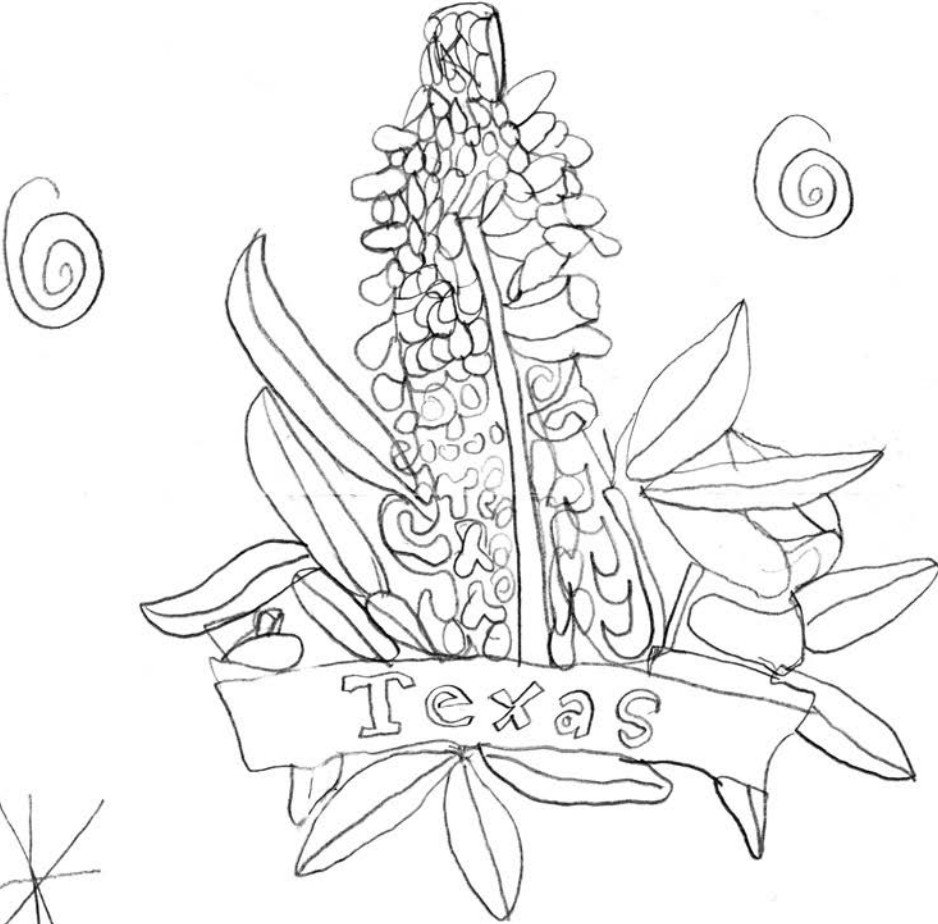
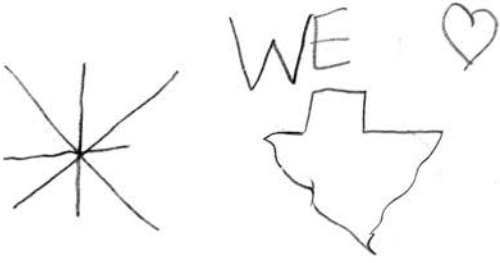
may be held to fill the vacancy in District No. 16 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 15th day of September, 2014.

Rick Perry, Governor

TRD-201404550





THE STATE

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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-1222-GA**

**Requestor:**

Mr. David Slayton

Administrative Director

Office of Court Administration

Post Office Box 12066

Austin, Texas 78711-2066

Re: Authority of a constitutional county court judge or commissioners court to appoint and terminate a court administrator for the county's district and statutory county courts (RQ-1222-GA)

**Briefs requested by October 14, 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-201404551

Katherine Cary

General Counsel

Office of the Attorney General

Filed: September 24, 2014



Opinions

**Opinion No. GA-1080**

The Honorable Royce West

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether school districts are exempt from the municipal drainage charge under the Municipal Drainage Utility Systems Act (RQ-1192-GA)

**S U M M A R Y**

A court would likely conclude that the exemption for school districts from the Municipal Drainage Utility Systems Act (the "Act") in subsections (a) and (b) of §552.053, Local Government Code is permissive

and that a municipality has the discretion, within the limitations of the Act, to decide whether to grant such an exemption.

A court would likely conclude that a reasonable drainage charge under the Act is not a tax from which a school district is exempt.

**Opinion No. GA-1081**

Mr. Jeff May

Collin County Auditor

2300 Bloomdale Road, Suite 3100

McKinney, Texas 75071

Re: Authority of a local behavioral health authority designated under §533.0356 of the Health and Safety Code to participate in the Department of State Health Service's vendor selection process to provide services within the authority's local service area (RQ-1193-GA)

**S U M M A R Y**

The North Texas Behavioral Health Authority ("NTBHA") can participate in the solicitation and procurement of service providers in its designated area only to the extent that it has been delegated such authority under §533.035 or §533.0356, or by agreement or contract. Otherwise, the Department of State Health Services has no legal obligation to allow the NTBHA to participate in that process.

**Opinion No. GA-1082**

The Honorable Jo Anne Bernal

EI Paso County Attorney

500 East San Antonio, Room 503

EI Paso, Texas 79901

Re: Whether §11.0641 of the Education Code requires school district trustees to file personal financial statements in specific circumstances (RQ-1194-GA)

**S U M M A R Y**

A school district trustee subject to §11.0641 of the Education Code who holds office at any time on or after January 1, 2015, including in a holdover capacity, must file a financial statement under §11.0641 for the 2014 calendar year. A school district trustee who has resigned and whose successor has been duly qualified and sworn into office prior to January 1, 2015, is not required to file a 2014 financial statement under §11.0641.

The El Paso County Commissioners Court lacks authority to impose additional burdens or conditions in excess of the existing statutory filing requirements chosen by the Legislature.

*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-201404540

Katherine Cary  
General Counsel  
Office of the Attorney General  
Filed: September 23, 2014



# PROPOSED RULES

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 10 TAC §5.2, §5.19

The Texas Department of Housing and Community Affairs ("the Department") proposes amendments to 10 TAC Chapter 5, Subchapter A, §5.2, concerning Definitions, and §5.19, concerning Client Income Guidelines. The purpose of the amendments to §5.2 is to define additional terms, including Award Date, Contract, and Life Threatening Crisis; to remove terms that are no longer relevant to these rules including Targeting and Terms and Conditions; to modify definitions due to change in federal law (such as OMB Circulars and Supplies) and to incorporate staff administrative corrections. The purpose of the amendments to §5.19 is to clarify what income sources are to be included and excluded during benefit determinations and to incorporate the eligibility determination requirements of 10 TAC §5.20, concerning Determining Income Eligibility. (Existing §5.20 is proposed for repeal concurrently with this amendment.)

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be clarification of definitions and requirements, consistency with federal requirements, greater and more efficient use of funds and greater flexibility for Subrecipients within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** Written comments on the rules may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us), or by fax to (512) 475-3935. ALL

COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 3, 2014.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092 which authorizes the Department to administer its Community Affairs programs.

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

###### §5.2. *Definitions.*

(a) To ensure a clear understanding of the terminology used in the context of the Community Affairs Programs, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--If, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways the Department may determine control include, but are not limited to:

- (A) Interlocking management or ownership;
- (B) Identity of interests among family members;
- (C) Shared facilities and equipment;
- (D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

~~[(2) CFR--Code of Federal Regulations.]~~

(3) Child [~~Children~~]--Household dependent [~~dependents~~] not exceeding eighteen (18) years of age.

(4) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(5) [~~(4)~~] Collaborative Application--An application from two or more organizations to provide services to the target population. [If a unit of general local government applies for only one organization, this will not be considered a Collaborative Application. Partners in the Collaborative Application must coordinate services and prevent duplication of services.]

(6) [~~(5)~~] Community Action Agencies (CAAs)--Local Private Nonprofit Organizations and Public Organizations [~~private and public nonprofit organizations~~] that carry out the Community Action

Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. ~~[Each CAA must have a board consisting of one-third elected public officials; not fewer than one-third representatives of low-income individuals and families; chosen in accordance with democratic selection procedures; and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.]~~

(7) ~~[(6)]~~ Community Action Plan--A plan required by the Community Services Block Grant (CSBG) Act which describes the local Eligible Entity ~~[(Subrecipient)]~~ service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

(8) ~~[(7)]~~ Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(9) ~~[(8)]~~ Community Services Block Grant (CSBG)--An HHS-funded program [A grant] which provides [U.S. federal] funding for CAAs and other Eligible Entities that seek to address poverty at the community level. [Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.]

(10) ~~[(9)]~~ Comprehensive Energy Assistance Program (CEAP)--A LIHEAP-funded [LIHEAP funded] program to assist low-income Households, particularly those with the lowest incomes, that pay a high proportion of Household income for home energy, primarily in meeting their immediate home energy needs.

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(12) ~~[(40)]~~ CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(13) ~~[(44)]~~ Declaration of Income Statement (DIS)--A Department-approved form for limited use and only when an applicant cannot obtain income documentation requiring the Subrecipient to document income and the circumstances preventing the client from obtaining documentation. The DIS is not complete unless notarized in accordance with §406.014 of the Texas Government Code. [has no documented proof of income.]

(14) ~~[(42)]~~ Department--The Texas Department of Housing and Community Affairs.

(15) Department of Energy (DOE)--Federal department that provides funding for the weatherization assistance program.

(16) Department of Health and Human Services (HHS)--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(17) Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(18) ~~[(43)]~~ Discretionary Funds--Those CSBG funds maintained ~~[in reserve]~~ by the Department ~~[a state]~~, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG Eligible Entities and not ~~designated [held in reserve]~~ for state administrative purposes.

(19) ~~[(44)]~~ DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy. 10 CFR Part 600 implements OMB requirements on behalf of DOE and establishes administrative requirements for grants and agreements.

(20) ~~[(45)]~~ Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

~~[(16)]~~ Equipment--A tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit. If the unit acquisition cost exceeds \$5,000, approval from the Department's Community Affairs Division must be obtained before the purchase takes place.]

(21) ~~[(47)]~~ Elderly Person--A person who is sixty (60) years of age or older, except for ESG.

(22) ~~[(48)]~~ Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(23) ~~[(49)]~~ Eligible Entity--Those local organizations in existence and designated by the federal government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(24) ~~[(20)]~~ Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

- (A) natural disaster;
- (B) a significant home energy supply shortage or disruption;
- (C) significant increase in the cost of home energy, as determined by the Secretary;
- (D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;
- (E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;
- (F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.

(H) This definition does not apply to ESG or HHSP.

(25) ~~[(21)]~~ Emergency Solutions Grants (ESG)--A HUD-funded [federal grant] program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing. [authorized in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378; as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act). ESG is funded through HUD.]

(26) ~~[(22)]~~ Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a Dwelling Unit.

(27) ~~[(23)]~~ Energy Repairs--Weatherization-related repairs necessary to protect or complete regular weatherization energy efficiency measures.

(28) Equipment--Tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit.

(29) ~~[(24)]~~ Families with Young Children--A family that includes a Child [ehild] age five (5) or younger.

(30) ~~[(25)]~~ High Energy Burden--Households with energy burden which exceeds 11% of annual gross income. Determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(31) ~~[(26)]~~ High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures, by way of example, at the time of this rulemaking, that amount is \$1,000, but is subject to change.

(32) ~~[(27)]~~ Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

(33) ~~[(28)]~~ Homeless [and] Housing and Services Program (HHSP)--A state funded program established under §2306.2585 of the Texas Government Code [by the State Legislature during the 81st Legislative session] with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

(34) ~~[(29)]~~ Household--Any individual or group of individuals who are living together as one economic unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

(35) ~~[(30)]~~ Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(36) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant household could lose their life without the Subrecipient's utility assistance because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by client report) and any member of the Household is dependent upon equipment that is prescribed by a medical professional, operated on electricity or gas and is necessary to sustain the person's life. Examples of life-sustaining equipment include but are not limited to kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not include information regarding the applicant's medical condition but may

include certification that such a device is required in the home to sustain life.

~~(37) [(31)]~~ Local Unit of Government--City, county, council of governments, and housing authorities.

~~(38) [(32)]~~ Low Income--Income in relation to family size and that governs eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP, CSBG, and LIHEAP WAP at or below 125% of the HHS Poverty Income guidelines;

(C) For ESG, 30% of the Area Median Income (AMI) as defined by HUD's Section 8 Income Limits for persons receiving prevention assistance; and

(D) For HHSP, 30% of the AMI as defined by HUD's Section 8 Income Limits for all clients assisted.

~~(39) [(33)]~~ Low Income Home Energy Assistance Program (LIHEAP)--An HHS-funded program which serves [A federally funded block grant program that is implemented to serve] low income Households who seek assistance for their home energy bills and/or weatherization services.

~~(40) [(34)]~~ Migrant Farm Worker [wörker]--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.

~~(41) [(35)]~~ Modified Cost Reimbursement--A contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

~~(42) [(36)]~~ Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

~~(43) [(37)]~~ National Performance Indicator--An individual measure of performance within the Department's reporting system for measuring performance and results of Subrecipients of funds.

~~(44) [(38)]~~ Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

~~(45)~~ Office of Management and Budget (OMB)--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

~~[(39)]~~ OMB--Office of Management and Budget, a federal agency.]

~~(46) [(40)]~~ OMB Circulars--Instructions and information issued by OMB to Federal agencies that [OMB eirculars] set forth principles and standards for determining costs for federal awards and establish [establishes] consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB. [Cost principles for local governments are set forth in OMB Circular A-87, and for nonprofit organizations in OMB Circular A-122. Uniform administrative requirements for local governments are set forth in OMB Circular A-102, and for nonprofits in OMB Circular A-110. OMB Circular A-133 "Audits of States, Local Governments, and Nonprofit Organi-

zations," provides audit standards for governmental organizations and other organizations expending federal funds.]

(47) [(41)] Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(48) [(42)] Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(49) [(43)] Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;

(B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(50) [(44)] Population Density--The number of persons residing within a given geographic area of the state.

(51) [(45)] Poverty Income Guidelines--The official poverty income guidelines as issued by the U.S. Department of Health and Human Services (HHS) annually.

(52) [(46)] Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(53) [(47)] Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(54) [(48)] Referral--The process of providing information to a client Household about an agency, program, or professional person that can provide the service(s) needed by the client.

(55) [(49)] Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.

(56) [(50)] Renter--A person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.

(57) [(51)] Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the Household annualized income must be derived from the agricultural labor or related industry.

(58) [(52)] Shelter--Defined by the Department as a Dwelling Unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities. This definition does not apply to ESG or HHSP.

(59) [(53)] Single Audit--As defined in the Single Audit Act of 1984 (as amended) or UGMS, a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered federal or state awards during such fiscal year

provided that each such audit shall encompass the financial statements and schedule of expenditures of federal or state awards for each such department, agency, and organizational unit.

(60) [(54)] Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

[(55) Social Security Act--As defined in 42 U.S.C. §§601, et seq.]

(61) [(56)] State--The State of Texas or the Texas Department of Housing and Community Affairs.

(62) [(57)] Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(63) [(58)] Subgrant--An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(64) [(59)] Subgrantee--The legal entity to which a subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(65) [(60)] Subrecipient--Generally, an organization with whom the Department contracts and provides CSBG, CEAP, ESG, HHSP, DOE WAP, or LIHEAP funds. (Refer to Subchapters B, D - G, J, and K of this chapter for program specific definitions.)

(66) [(61)] Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements." A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.

(67) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

(68) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(69) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

[(62) TAC--Texas Administrative Code.]

[(63) Targeting--Focusing assistance to Households with the highest program applicable needs.]

[(64) Terms and Conditions--Binding provisions provided by a funding organization to grantees accepting a grant award for a specified amount of time.]

(70) [(65)] Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

(71) Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial man-



agement procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. In addition, Chapter 2105, Texas Government Code, subjects all subrecipients of federal block grants to the Uniform Grant and Contract Management Standards.

(72) [(66)] Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(73) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

[(67) U.S.C.--United States Code.]

[(68) USDHHS/HHS--U.S. Department of Health and Human Services.]

[(69) USDOE/DOE--U.S. Department of Energy.]

[(70) USHUD/HUD--U.S. Department of Housing and Urban Development.]

(74) [(71)] Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving ESG and LIHEAP beneficiaries.

(75) [(72)] [WAP--] Weatherization Assistance Program (WAP)--DOE and LIHEAP funded program designed to reduce the energy cost burden of low income households through the installation of energy efficient weatherization materials and education in energy use.

(76) [(73)] [WAP PAC--] Weatherization Assistance Program Policy Advisory Council (WAP PAC)--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.

(77) [(74)] Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(78) [(75)] Weatherization Project--A project conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

§5.19. [Client ] Income Eligibility [Guidelines].

(a) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross income is to be used, not net income. [Except for ESG and HHSP, the Department has defined eligibility for program assistance under the Poverty Income Guidelines.]

(1) If an income source is not excluded below, it must be included when determining income eligibility.

[(b) For all programs except ESG, Subrecipients will use the list of included and excluded income to determine eligibility for all programs, as described in paragraphs (1) and (2) of this subsection. Income means Cash Receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross Income is to be used, not Net Income.]

[(1) Included Income:]

[(A) Temporary Assistance for Needy Families (TANF);]

[(B) Money, wages and salaries before any deductions;]

[(C) Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);]

[(D) Regular payments from social security, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI);]

[(E) Railroad retirement;]

[(F) Unemployment compensation;]

[(G) Strike benefits from union funds;]

[(H) Worker's compensation;]

[(I) Training stipends;]

[(J) Alimony;]

[(K) Military family allotments;]

[(L) Private pensions;]

[(M) Government employee pensions (including military retirement pay);]

[(N) Regular insurance or annuity payments; and]

[(O) Dividends; interest; net rental income; net royalties; periodic receipts from estates or trusts; and net gambling or lottery winnings.]

(2) Excluded Income:

(A) Capital gains [any assets drawn down as withdrawals from a bank];

(B) Any assets drawn down as withdrawals from a bank;

(C) Balance of funds in a checking or savings account;

(D) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(E) [(B)] The sale of property, a house, or a car;

(F) [(C)] One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(G) [(D)] Tax refunds, Earned Income Tax Credit refunds [Gifts, loans, and lump-sum inheritances];

(H) Jury duty compensation;

(I) Gifts, loans, and lump-sum inheritances;

(J) [(E)] One-time insurance payments, or compensation for injury;

(K) [(F)] Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(L) Reimbursements (for mileage, gas, lodging, meals, etc.);

(M) [(G)] Food or housing received in lieu of wages;

(N) [(H)] The value of food and fuel produced and consumed on farms;

(O) [(H)] The imputed value of rent from owner-occupied non-farm or farm housing;

(P) [(J)] Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches (Medicare deduction from Social Security Administration benefits should not be counted as income);

(Q) [(K)] Housing assistance and combat zone pay to the military;

(R) [(L)] Veterans (VA) Disability Payments;

(S) [(M)] College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(T) [(N)] Child support payments (amount paid by payor may not be deducted from income) [whether received by the payee or paid by the payor];

(U) [(O)] Income of Household members under eighteen (18) years of age;

(V) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;

(W) AmeriCorps Program payments, allowances, earnings, and in-kind aid;

(X) [(P)] Depreciation for farm or business assets;

(Y) [(Q)] Reverse mortgages;

(Z) [(R)] Payments for care of Foster Children;

(AA) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(BB) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(CC) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(DD) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(EE) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(FF) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(GG) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(HH) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(II) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(JJ) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(KK) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.);

(LL) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(MM) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(NN) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(OO) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(PP) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(QQ) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(RR) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(SS) [(S)] Any other income required to be excluded by the federal or state funding program.

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to project or estimate the annual income that the Household expects to receive. The following is an acceptable method for calculating the annual income anticipated for the coming year:

(1) Generally the Subrecipient must use current circumstances to anticipate income. The Subrecipient calculates projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the Subrecipient may add the total income for the months before, and the total for the months after the increase.

(3) Once all sources of income are known, Subrecipients must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(c) Except for ESG, to annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

(d) For HHSP, Subrecipients may select either the method described in (a) - (c) of this section or the method described in (e) of this section, but once selected the method must be used consistently throughout the contract term.

(e) For ESG, Subrecipients must use the income determination method outlined in 24 CFR 5.609, must use the list of income included in HUD Handbook 4350, and must exclude from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(f) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, or applicants who are unable to locate income documentation of a recently deceased spouse. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.

(g) The DIS must be notarized. Attainment of notary public commission is an allowable activity as an administrative cost.

(h) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

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 September 19, 2014.

TRD-201404463

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 2, 2014

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



## 10 TAC §5.16, §5.20

*(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 Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC §5.16, concerning Monitoring and Single Audit Requirement, and §5.20, concerning Determining Income Eligibility. The purpose of the proposed repeal is to consolidate requirements and to avoid redundancy. The requirements of 10 TAC §5.16 are included in 10 TAC §1.3, concerning Delinquent Audits and Related Issues, and 10 TAC §5.2101, concerning Compliance Monitoring, and are no longer required as a separate section. The requirements of §5.20 are proposed for incorporation into 10 TAC §5.19 through a concurrent rulemaking.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to avoid redundancy in and clarify Department rules. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by email to [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us); or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 3, 2014.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, and §2306.092, which authorizes the Department to administer its Community Affairs programs.

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

*§5.16. Monitoring and Single Audit Requirement.*

*§5.20. Determining Income Eligibility.*

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 September 19, 2014.

TRD-201404464

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 2, 2014

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



## SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG)

## 10 TAC §§5.204, 5.207, 5.210, 5.213

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter B, §5.204, concerning Use of Funds; §5.207, concerning Subrecipient Performance; §5.210, concerning CSBG Needs Assessment and Community Action Plan; and §5.213, concerning Board Structure. The purpose of the amendments is to remove reference to certain OMB circulars, update requirements for Subrecipient performance by indicating which rules apply to Eligible Entities and which to other CSBG Subrecipients, including federal and state requirements for Subrecipient activities, and further explaining state requirements for client case management; to delete a portion of §5.210 which will be moved to §5.207; to clarify requirements for submission of the two plans; and to clarify requirements for adequate representation on boards of directors.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be to remove redundant or unnecessary references, and provide for greater and more efficient use of funds and greater flexibility for Subrecipients within program rules. There will not be any new economic cost to any individuals required to comply with the rules as a result of this action.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** Written comments on the rules may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by email to [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us); or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 3, 2014.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

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

### §5.204. Use of Funds.

(a) CSBG funds distributed to Eligible Entities for a fiscal year may be available for obligation during that fiscal year and the succeeding fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, i.e., utilities, rent, food, shelter, clothing etc. [For additional requirements reference 42 U.S.C. §9908(b)(A)(i - vii) and Office of Management and Budget (OMB) Circulars A-122 and A-87.]

(b) Utility and rent deposit refunds from vendors must be reimbursed to the Subrecipient and not the client. Refunds [Funds] should be treated as program income.

### §5.207. Subrecipient Performance.

(a) Eligible Entities shall submit information regarding the use of funds as part of the Community Action Plan as described in §5.210 of this chapter. [Budgets. CSBG Eligible Entities and any other funded organizations shall submit a budget to facilitate the contract execution process. A certification of board approval of CSBG budget form issued by the Department must also be submitted with planned budgets.]

(b) Unexpended Funds. The Department reserves the right to deobligate or recapture funds from CSBG Eligible Entities and any other CSBG-funded organizations.

(1) The [U.S.] Department of Health and Human Services (HHS) [Administration for Children and Families] issues terms and conditions for receipt of funds under the CSBG. Subrecipients [of CSBG funds] will comply with the requirements of the terms and conditions of the CSBG award.

(2) The Coats Human Services Reauthorization Act of 1998, allows states to recapture unexpended CSBG funds in excess of 20% of the CSBG funds obligated to an Eligible Entity unless[-. This may be] superseded by Congressional action in the appropriation process or by the terms and conditions issued by HHS [U.S. Department of Health and Human Services] in the CSBG award letter.

(c) Services to Poverty Population. Eligible Entities [Subrecipients] administering services to clients in one or more CSBG service area counties shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the service area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a finding. Eligible Entities [Subrecipients] with a service area of a single county shall demonstrate marketing and outreach efforts to render direct services to a reasonable percentage of the county's eligible population based on the most recent [decennial] census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG contract.

(d) In keeping with the regulations issued under Title II, §676(b)(3)(C), §676(5),(6),(9) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG organizations where applicable, to coordinate CSBG funds and form partnerships with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(e) In keeping with the regulations issued under Title II, §676(b)(4), CSBG Eligible Entities shall provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract the conditions of starvation and malnutrition. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(f) In keeping with the regulations issued under Title II, §676(b)(5), CSBG Eligible Entities, shall coordinate the provision of employment and training activities through local workforce investment systems under the Workforce Investment Act of 1998.

(g) In keeping with the regulations issued under Title II, §678G(b)(1-2), CSBG Eligible Entities shall inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(h) Documentation of Services. Subrecipients must maintain a record of referrals and services provided.

(i) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form that documents income, assesses client needs, and captures the demographic and household characteristic data required for the monthly performance and expenditure report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all clients for each program year.

(j) Case Management.

(1) In keeping with the regulations issued under Title II, §676(b) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG Subrecipients where applicable, to incorporate integrated case management systems in the administration of their CSBG program (Title II, §676(b)). Incorporating case management in the service delivery system and providing assistance that has a long-term impact on the client, such as enabling the client to move from poverty to self-sufficiency, to maintain stable families, and to revitalize the community, supports the requirements of Title II, §676(b). An integrated case management system improves the overall provision of assistance and improves each Subrecipient's ability to transition persons from poverty to self-sufficiency. Case management can be provided on a short-term basis to meet immediate needs, or for Eligible Entities it can be provided on a long-term basis to persons working to transition out of poverty and achieve self-sufficiency.

(2) Subrecipients must have and maintain documentation of case management services provided.

(3) Eligible Entities must provide ongoing case management services for persons working to transition out of poverty and achieve self-sufficiency. The case management services must include the components described in subparagraphs (A) - (N) of this paragraph. The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form, including but not limited to:

(A) Self-Sufficiency Client Questionnaire to assess a client's status in the areas of employment, job skills, education, income, housing, food, utilities, child care, transportation, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the client's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the client's willingness to participate in case management services on an ongoing basis;

(D) Case Management Agreement between Subrecipient and client;

(E) Release of Information Form;

(F) Case Management Service Plan to document steps and timeline to achieve goals;

(G) Case management follow-up - A system to document client progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or e-mail. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Poverty Income Guidelines for 90 days;

(L) Client Satisfaction Survey;

(M) A system to document and notify clients of termination of case management services; and

(N) Evaluation System - a process to determine the effectiveness of case management services and CSBG services.

(k) Subrecipient Requirements for Review Process for Applicants Denied based on Income Eligibility. When an applicant is denied services based solely on income eligibility, the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing and no further appeal is afforded to the applicant.

(l) Subrecipient Requirements for Appeals Process for CSBG Applicants/Clients Denied for Reasons other than Income Eligibility. Subrecipients shall establish a CSBG denial of service complaint procedure. At a minimum, the procedures described in paragraphs (1) - (7) of this subsection shall be included:

(1) Subrecipients shall provide a written denial of assistance notice to applicant/client within ten (10) business days of the adverse determination. This notification shall include written notice of the right to a hearing and specific reasons for the denial by component. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice;

(2) Subrecipient who receives an appeal or client complaint shall establish an appeal committee composed of at least three persons. Subrecipient shall maintain documentation of appeals/complaints in their client files;

(3) Subrecipient shall hold the hearing within twenty (20) days after the Subrecipient received the appeal/complaint request from the applicant/client;

(4) Subrecipient shall record the hearing;

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case;

(6) The hearing shall allow the applicant/client at least equal time, if requested, to present relevant information contesting the decision;

(7) Subrecipient shall notify applicant/client of the decision in writing. The Subrecipient shall mail the notification by close of business on the business day following the decision (one (1) day turnaround). In the event of an adverse decision, the notice must inform the applicant of their ability to appeal to the Department and must state that the applicant must appeal the decision in writing within ten (10) days of the decision.

(m) In the event of an adverse decision by the Department under subsection (l) of this section, applicants/clients who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Texas Government Code, Chapter 2001.

(n) The hearing shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient.

(o) If client appeals to the Department, the funds should remain encumbered until the Department completes its decision.

§5.210. CSBG Needs Assessment and Community Action Plan.

(a) In accordance with [the CSBG Act and] §676 of the CSBG Act, the Department is required to secure a Community Action Plan on an annual basis from each CSBG Eligible Entity. The Community Action Plan shall be submitted to the Department on or before a date specified by the Department in the Eligible Entity contract [October 1 of each year].

(b) Every five (5) years each CSBG Eligible Entity shall complete a community needs assessment, upon which the [CSBG] Community Action Plan will be based [include a community needs assessment from every CSBG Eligible Entity]. The community needs assessment shall be submitted to the Department on or before a date specified by the Department in the Eligible Entity contract. [August 1 each fifth (5th) year according to the CSBG Eligible Entity(ies)' established schedule.]

(c) The Community Action Plan shall at a minimum include a budget, a description of the delivery of services for the case management system in accordance with the National Performance Indicators and shall include a performance statement that describes the services, programs and activities to be administered by the organization.

(d) Hearing. In conjunction with the Submission of the Community Action Plan, the Eligible Entity must submit to the Department a certification from its board that [A board certification that] a public hearing was conducted on the proposed use of funds [for the Community Action Plan must be submitted to the Department with the plan].

(e) Subrecipients receiving state discretionary funds under §5.203(b) of this subchapter (relating to Distribution of CSBG Funds) are not required to submit a Community Action Plan. All CSBG Subrecipients must develop a performance statement which identifies the services, programs, and activities to be administered by the organization.

[(e) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form which includes the demographic and household characteristic data required for the monthly performance and expenditure report, referenced in Subchapter A of this chapter (relating to General Provisions); for all Households receiving a community action service. A new CSBG intake form or a centralized intake form must be completed and maintained on an annual basis to coincide with the CSBG program year of January 1st through December 31st.]

[(f) Case Management.]

[(1) In keeping with the regulations issued under Title II, §676(b) State Application and Plan, the Department requires CSBG Subrecipients to incorporate integrated case management systems in the administration of their CSBG program (Title II, §676(b)). Incorporating case management in the service delivery system and providing assistance that has a long-term impact on the client, such as enabling the client to move from poverty to self-sufficiency; to maintain stable families; and to revitalize the community, supports the requirements of Title II, §676(b). An integrated case management system improves the overall provision of assistance and improves each Subrecipient's ability to transition persons from poverty to self-sufficiency.]

[(2) Subrecipients must have and maintain documentation of a case management program that has the components described in subparagraphs (A) - (H) of this paragraph:]

[(A) Intake Form;]

[(B) Pre-assessment to determine service needs; to determine the need for case management; and to determine which individuals/families to consider enrolling in case management program;]

[(C) Integrated assessment of individual/family service needs of those accepted into case management program;]

[(D) Development of case management service plan to meet goals and become self-sufficient;]

[(E) Provision of services and coordination of services to meet needs and achieve self-sufficiency;]

[(F) Monitoring and follow-up of participant's progress;]

[(G) Case closure, once individual has become self-sufficient; and]

[(H) Evaluation process to determine effectiveness of case management system.]

[(3) As required by 42 U.S.C. §678G(b)(1-2), CSBG Subrecipients shall inform custodial parents in single-parent families that participate in programs, activities, or services about the services available through the Texas Attorney General's Office with respect to the collection of child support payments and/or refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.]

[(g) Non-CSBG Eligible Entities receiving state discretionary funds under §5.203(b) of this subchapter (relating to Distribution of CSBG Funds) are not required to submit a Community Action Plan. All CSBG Subrecipients must develop a performance statement which identifies the services, programs, and activities to be administered by the organization.]

[(h) Subrecipient Requirements for Appeals Process for CSBG Applicants/Clients. Subrecipients shall establish a CSBG denial of service complaint procedure to address written complaints from program applicants/clients. At a minimum, the procedures described in paragraphs (1) - (8) of this subsection shall be included:]

[(1) Subrecipients shall provide a written denial of assistance notice to applicant/client within ten (10) business days of the adverse determination. This notification shall include written notice of the right to a hearing and specific reasons for the denial by component. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice;]

[(2) Subrecipient who receives an appeal or client complaint shall establish an appeal committee composed of at least three persons. Subrecipient shall maintain documentation of appeals/complaints in their client files;]

{(3) Subrecipient shall hold the hearing within twenty (20) days after the Subrecipient received the appeal/complaint request from the applicant/client;}

{(4) Subrecipient shall record the hearing;}

{(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case;}

{(6) The hearing shall allow the applicant/client at least equal time, if requested, to present relevant information contesting the decision;}

{(7) Subrecipient shall notify applicant/client of the decision in writing. The Subrecipient shall mail the notification by close of business on the business day following the decision (one (1) day turnaround);}

{(8) If the denial is solely based on income eligibility, the provisions in paragraphs (2) - (7) of this subsection, do not apply and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing and no further appeal is afforded to the applicant.}

{(i) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision.}

{(j) Applicants/clients who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Texas Government Code, Chapter 2001.}

{(k) The hearing shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient.}

{(l) If client appeals to the Department, the funds should remain encumbered until the Department completes its decision.}

#### §5.213. Board Structure.

(a) Eligible Entities that are Private Nonprofit Organizations [Private nonprofit entities;] shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Some of the members of the board shall be selected by the Private Nonprofit Organizations [private nonprofit entity] and others through a democratic process; the board shall be composed so as to assure that the requirements of §676B(a)(2) of the CSBG Act are followed and are composed as:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement. Refer to subsection (g)(1)(B) (d)(1)(B) of this section entitled "Permanent Representatives and Alternates" for related information;

(2) not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community under subsection (b)(1)(B) of this section, resides in the neighborhood represented by the member;

(3) the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) For public organizations to be considered to be an Eligible Entity [eligible entity] for purposes of the CSBG Act, §676B(b), the entity shall administer the CSBG grant through tripartite boards that fully participate in the development, planning, implementation and evaluation of programs that serve low-income communities or act as an advisory board. [as:]

{(1) A tripartite board, which shall have members selected by the organization and shall be composed so as to assure that not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members:}

{(A) are representative of low-income individuals and families in the neighborhood served;}

{(B) reside in the neighborhood served; and}

{(C) are able to participate actively in the development, planning, implementation, and evaluation of programs funded under this chapter; or}

{(D) If conditions in subparagraphs (A) - (C) of this paragraph are not utilized, then another mechanism specified by the state which meets the tripartite requirements may be used. Public organizations that choose to utilize another mechanism must submit to the Department, for review and approval, a description of the mechanism to be utilized to select low-income representatives. The mechanism must assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded under this chapter.}

{(2) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Refer to subsection (d)(1)(B) of this section, entitled "Permanent Representatives and Alternates" for related information.}

{(3) The remainder of the members are officials or members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.}

(c) For a Public Organization to administer the CSBG grant as an Eligible Entity through an advisory board or other qualifying method, prior review and approval from the Department is required.

(d) All Public Organization Boards must have a tripartite structure where:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one per-

manent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement. Refer to subsection (g)(1)(B) of this section, entitled "Permanent Representatives and Alternates" for related information:

(2) not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; reside in the neighborhood served; and are able to participate actively in the development, planning implementation, and evaluation of programs funded by CSBG; and

(3) the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(e) Another mechanism specified by the Department which meets the tripartite requirements, such as an advisory board, may be used. However, the mechanism the Public Organization wishes to use must be submitted to the Department for review and approval. The mechanism must assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs funded by CSBG.

(f) [(e)] Eligible Entities administering the Head Start Program must comply with[;] the Head Start Act (42 U.S.C. §9837) that requires the governing body membership to comply with the requirements of §642(c)(1) of the Head Start Act. Exceptions shall be made to the requirements of clauses (i) - (iv) of §642(c)(1) of the Head Start Act for members of a governing body when those members oversee a public entity and are selected to their positions with the public entity by public election or political appointment.

(g) [(d)] Selection. Pursuant to §676B of the CSBG Act, Eligible Entities that are Private Nonprofit Organizations [Private nonprofit entities] and Public Organizations [public organizations] have the responsibility for selection and composition of the board.

(1) Public Officials:

(A) Elected public officials or appointed public officials, selected to serve on the board, shall have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues; and

(B) Permanent Representatives and Alternates. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board.

(i) Permanent Representatives. The public officials selected by a private nonprofit entity or public organization to serve on the board may each choose one permanent representative to serve on the board in a full-time capacity. The public officials of the public organization may choose a representative to serve on the board or other governmental body. The representative need not be a public official but shall have full authority to act for the public official at meetings of the board. Permanent representatives may hold an officer position on the board. If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board. Alternates may not hold an officer position on the board.

(ii) Alternate Representatives. If the private nonprofit entity or public organization board chooses to allow alternates, the alternates for low-income representatives shall be elected at the same time and in the same manner as the board representative is elected to serve on the board. Alternates for representatives of private sector organizations may be designated to serve on the board and should be

selected at the same time the board representative is selected. In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board. Alternates may not hold an officer position on the board.

(2) Low-Income Representatives:

(A) An essential objective of community action is participation by low-income individuals in the programs which affect their lives; therefore, the CSBG Act and its amendments require representation of low-income individuals on boards or state-specified governing bodies. The CSBG statute requires that not fewer than one-third of the members shall be representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member; or

(B) Board members representing low-income individuals and families must be selected in accordance with a democratic procedure. This procedure, as detailed in subparagraph (D) of this paragraph, may be either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider;

(C) Every effort should be made by the nonprofit entity or public organization to assure that low-income representatives are truly representative of current residents of the geographic area to be served, including racial and ethnic composition, as determined by periodic selection or reselection by the community. "Current" should be defined by the recent or annual demographic changes as documented in the needs/community assessment. This does not preclude extended service of low-income community representatives on boards, but it does suggest that continued board participation of longer term members be revalidated and kept current through some form of democratic process; and

(D) The procedure used to select the low-income representative must be documented to demonstrate that a democratic selection process was used. Among the selection processes that may be utilized, either alone or in combination, are:

(i) Selection and elections, either within neighborhoods or within the community as a whole; at a meeting or conference, to which all neighborhood residents, and especially those who are poor, are openly invited;

(ii) Selection of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents;

(iii) Selection, on a small area basis (such as a city block); or

(iv) Selection of representatives by existing organizations whose membership is predominately composed of poor persons.

(3) Representatives of Private Groups and Interests:

(A) The private nonprofit entity or public organization shall select the remainder of persons to represent the private sector on the board or it may select private sector organizations from which representatives of the private sector organization would be chosen to serve on the board; and



(B) The individuals and/or organizations representing the private sector shall be selected in such a manner as to assure that the board will benefit from broad community involvement. The board composition for the private sector shall draw from officials or members of business, industry, labor, religious, law enforcement, education, school districts, representatives of education districts and other major groups and interests in the community served.

(h) Eligible Entities must have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation as described in (a) - (g) of this section if such persons or organizations consider there to be inadequate representation on the board of the Eligible Entity.

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 September 19, 2014.

TRD-201404465

Timothy K. Irvine  
Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 2, 2014

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



## SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

### 10 TAC §5.423

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter D, §5.423, concerning the Household Crisis Component. The purpose of the amendments is to clarify requirements for purchase of portable heating and cooling units to change from an appliance size-based requirement to a requirement that addresses the work that must be completed to install the appliance.

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

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be clarification of existing requirements, greater and more efficient use of funds, and greater flexibility for Subrecipients within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** Written comments to the rule may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O.

Box 13941, Austin, Texas 78711-3941, by email to [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us) or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 3, 2014.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to administer its Community Affairs programs.

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

#### §5.423. Household Crisis Component.

(a) A bona fide Household crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages or a terrorist attack have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Household, particularly the Elderly, the Disabled, or a Family with Young Children [~~Elderly, Persons with Disabilities, or children age 5 and younger~~].

(b) A utility disconnection notice may constitute a Household crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been provided to the Subrecipient within the effective contract term and the notice of disconnection must not be dated more than sixty (60) days from receipt at the Subrecipient.

(c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; i.e. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds are available to cover the Household's remaining crisis need.

(d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this program.

(e) Payments may not exceed Household's actual utility bill.

~~[(e) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one year. Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis. If the client's crisis requires more than the Household limit to resolve, it exceeds the scope of this program. If the crisis exceeds the Household limit, Subrecipient may pay up to the Household limit but the rest of the bill will have to be paid from other funds to resolve the crisis. Payments may not exceed client's actual utility bill. The assistance must result in resolution of the crisis.]~~

(f) ~~[(4)]~~ Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may directly issue vouchers to provide:

(1) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(2) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(3) Service and repair of existing heating and cooling units not to exceed \$2,500 during the contract period when Subrecipient has met local weather crisis criteria. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Documentation of service/repair and related warranty must be included in the client file;

(4) Portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) may be purchased for households that include at least one member that is Elderly, Disabled, or a Family with Young Children [~~Elderly, Persons with Disabilities, or children age 5 and younger~~], when Subrecipient has met local weather crisis criteria;

(5) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(6) Purchase of portable heating/cooling units which require performance of electrical work for proper installation [~~voltage exceeds 110 volt~~] requires prior written approval from the Department;

(7) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(8) Portable heating/cooling units must be Energy Star® and compliant with the 2009 International Residential Code (IRC). In cases where the type of unit is not rated by Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(g) [(e)] Crisis funds, whether for emergency fuel deliveries, repair of existing heating and cooling units, purchase of portable heating/cooling units, or temporary shelter, shall be considered part of the total maximum Household allowable assistance.

(h) [(f)] When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(i) [(g)] Time Limits for Assistance--Subrecipients shall ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

(j) [(h)] Subrecipients must maintain written documentation in client files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in client files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.

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 September 19, 2014.

TRD-201404466

Timothy K. Irvine  
Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 2, 2014

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



## SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL

### 10 TAC §5.502, §5.528

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter E, Weatherization Assistance Program General, §5.502 concerning Purpose and Goals and §5.528 concerning Health and Safety. The purpose of the amendments is to clarify requirements for administration of the program, adding text stating that an organization that administers the WAP must administer both programs, and that allowable health and safety funds are limited to 20% of total unit expenditures and not on 20% of the program budget.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments will be in effect, the public benefit anticipated as a result of amendments will be clarification of requirements and greater and more efficient use of funds and expenditure of funds within program rules. There will not be any new economic cost to any individuals required to comply with the rule as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments to the rule may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us) or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 3, 2014.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which generally

authorizes the Department to adopt rules, and more specifically Texas Government Code, §2306.092, which authorizes the Department to administer its Community Affairs programs.

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

§5.502. *Purpose and Goals.*

(a) DOE-WAP and LIHEAP-WAP offers awards [grants] to eligible Community Action Agencies, Private Nonprofit Organizations [nonprofits], and Public Organizations with targeted beneficiaries being households with low incomes, with priority given to the Elderly; Persons with Disabilities; Families with Young Children; Households with the highest energy costs or needs in relation to income; and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) Organizations administering a Department-funded weatherization program must administer both the DOE-WAP and the LIHEAP-WAP.

(d) [(e)] The Department shall administer and implement the DOE-WAP program in accordance with DOE rules (10 CFR Part 440). The Department shall administer and implement the LIHEAP-WAP program in accordance with a combination of LIHEAP law (42 U.S.C. §§6861, et seq.) and DOE rules. LIHEAP weatherization measures may be leveraged with DOE weatherization measures in which case all DOE rules and requirements will apply.

(e) [(d)] If Subrecipient leverages DOE weatherization funds with any other weatherization funds, all DOE rules and requirements will apply.

§5.528. *Health and Safety.*

(a) Health and Safety expenditures may not exceed 20% of total unit expenditures (Materials, Labor, Program Support, and Health and Safety) at the end of the contract period.

[(a) Health and Safety funds will have a maximum of 20% of the Materials, Labor and Program Support budgets. ]

(b) Subrecipients shall provide weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from weatherization work.

(c) If health and safety issues identified on an individual unit (which would be exacerbated by any weatherization work performed) cannot be abated within the allowable WAP limits, the unit exceeds the scope of this program.

(d) Subrecipients must test for high carbon monoxide (CO) levels and bring CO levels to acceptable levels before weatherization work can start. The Department has defined maximum acceptable CO readings as follows:

- (1) 25 parts per million for cook stove burners and unvented space heaters;
- (2) 100 parts per million for vented combustion appliance; and
- (3) 150 parts per million for cook stove ovens.

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 September 19, 2014.

TRD-201404467

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 2, 2014

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



## SUBCHAPTER K. EMERGENCY SOLUTIONS GRANT

### 10 TAC §5.2013

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 5, Subchapter K, §5.2013, concerning Environmental Clearance. The purpose of the proposed new section is to clarify that awardees must complete the environmental review process prior to commencing associated activities and that the Department will not provide reimbursement for activities for which the Subrecipient did not complete the Department's environmental review process beforehand.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be assurance of Subrecipient compliance with federal rules. There are no anticipated additional economic costs to individuals required to comply with the section as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no additional economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us) or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. NOVEMBER 3, 2014.

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

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

§5.2013. *Environmental Clearance.*

All ESG activities require some level of environmental clearance. Subrecipients must obtain the correct level of environmental clearance prior to commencing associated activities. Activities for which the Subrecipient did not properly complete the Department's environmental review process before commencing an activity are ineligible and funds will not be reimbursed or will be required to be repaid.

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 September 19, 2014.

TRD-201404468

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 2, 2014

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



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 129. STUDENT ATTENDANCE

##### SUBCHAPTER AA. COMMISSIONER'S RULES

###### 19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The proposed amendment would adopt by reference the *2014-2015 Student Attendance Accounting Handbook*.

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the Texas Administrative Code (TAC). Legal counsel first made this recommendation in 2000 as a result of a court decision challenging state agency decision making via administrative letters and publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, agency staff members proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each July or August. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2014-2015 school year.

Significant changes to the *2014-2015 Student Attendance Accounting Handbook* from the *2013-2014 Student Attendance Accounting Handbook* include the following.

###### Section 2

A student's Texas Unique Student ID would be added to the list of information required for the Student Detail Report.

The list of required documentation for audit purposes would be revised to include documentation used to verify a student's identity and age and documentation used to verify a student's residency or other eligibility for enrollment.

###### Section 3

An explanation of "membership" would be added. Information on eligibility for average daily attendance (ADA) would be clarified.

Information telling handbook users where to look for more information on ADA eligibility as it relates to students who are eligible for a preschool program for children with disabilities and are served in a prekindergarten classroom would be moved to a new location in Section 3. Also, Section 3 information on this topic that is provided in more detail in other handbook sections would be deleted.

Information at the beginning of the subsection on enrollment would be divided into separate subsections on residency, documentation of age and identity, and securing student records. Also, the subsection on enrollment would be revised to include information about automated systems for confirming the address of students who are continuing enrollment in a school district.

Information on students who will be in a school district for 10 days or fewer would be clarified.

A subsection on attendance accounting for students attending nonresidential treatment facilities would be added.

Requirements for the logs kept by general education homebound (GEH) teachers would be revised to state that a log must include a student's Texas Unique Student ID instead of the student's Social Security number or alternative ID number.

The subsection on makeup days would be revised to state that the agency will not grant a request to have an early release day on a makeup day. Also, guidance on the selection of makeup days would be clarified.

Information on waivers related to low attendance and missed instructional days would be clarified.

Information that applies specifically to charter schools with campuses in different geographic regions of the state would be added to the table related to closures for health or safety issues.

###### Section 4

Information on speech therapy and the Public Education Information Management System (PEIMS) 405 record would be updated to reflect that the mainstream instructional setting code (40) cannot be reported on that record.

Requirements for the logs kept by special education homebound teachers would be revised to state that a log must include a student's Texas Unique Student ID instead of the student's Social Security number or alternative ID number.

Information on the instructional setting code for the full-time early childhood special education setting (45) would be clarified to explain that the code should not be used for a student who receives any special education and related services in a regular early childhood setting or spends any part of the instructional day in a regular early childhood setting.

###### Section 5

A statement would be added that career and technical education (CTE) weighted funding may be earned for only 30 consecutive school days if a district has assigned a substitute teacher who is not appropriately certified to teach a CTE course.

Subsections on earning CTE contact hours while in various non-campus-based settings would be consolidated into one subsection. That subsection would also address students in a GEH program.

Most of the Section 5 information about PEIMS records would be deleted, as it is not specifically related to attendance accounting.

Information on determining CTE codes to calculate CTE contact hours would be revised.

#### *Section 6*

The statement that all staff members serving limited English proficient (LEP) students must receive training in sheltered instruction would be removed.

#### *Section 7*

Information related to establishing a student's eligibility for prekindergarten based on the student's being LEP would be revised to require that the student be identified as an English language learner by a language proficiency assessment committee. Also, information on preregistering students whose eligibility for prekindergarten is based on LEP status would be added.

Information related to preregistration and documentation of family income level would be added in the subsection on student eligibility for prekindergarten based on eligibility for the National School Lunch Program.

Information on definitions that apply to homeless children would be clarified.

#### *Section 9*

Clarification would be added that if a special education student is provided special education homebound services during a week but not pregnancy-related services (PRS), the student may be counted present, but the student is not eligible to generate PRS weighted funding for the week.

Requirements for the logs kept by teachers providing compensatory education home instruction would be revised to state that a log must include a student's Texas Unique Student ID instead of the student's Social Security number or alternative ID number.

#### *Section 10*

Section 10, which provides information on alternative education programs and disciplinary removals, would be renamed and heavily revised so that information not directly related to attendance accounting would be removed.

Information on students required to attend juvenile justice alternative education programs (JJAEPs) would be clarified to state that a student who is absent on his or her first day of scheduled JJAEP attendance is reported absent at the campus at which he or she was enrolled before assignment to the JJAEP.

#### *Section 11*

Information on college readiness standards would be updated.

#### *Section 14*

Outdated definitions would be revised or removed.

#### *Throughout the Handbook*

The term "instructional arrangement/setting" would be replaced with "instructional setting." Language would be revised to be plainer and clearer.

The proposed amendment would place the specific procedures contained in the *2014-2015 Student Attendance Accounting Handbook* in the TAC. The TEA distributes FSP funds according to the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the PEIMS.

The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept would correspond with the student attendance accounting requirement changes described previously.

Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Dr. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

The public comment period on the proposal begins October 3, 2014, and ends November 3, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 3, 2014.

The amendment is proposed under the Texas Education Code (TEC), §30A.153, which requires the commissioner to adopt rules for the implementation of Foundation School Program funding for the state virtual school network, including rules regarding attendance accounting, and the TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the TEC, §30A.153 and §42.004.

§129.1025. *Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting

for State Funding Purposes) and the Texas Education Code, §42.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2014-2015 [2013-2014] are described in the official Texas Education Agency (TEA) publication *2014-2015 [2013-2014] Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the *2014-2015 [2013-2014] Student Attendance Accounting Handbook* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the *2014-2015 [2013-2014] Student Attendance Accounting Handbook* and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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 September 17, 2014.

TRD-201404441

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 2, 2014

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



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 163. LICENSURE

##### 22 TAC §163.7

The Texas Medical Board (Board) proposes amendments to §163.7, concerning Ten Year Rule.

The amendments to §163.7 eliminate the requirement of current board certification and simply allow proof of passage of a written, monitored specialty certification examination from a member board of the American Board of Medical Specialties or Bureau of Osteopathic Specialists, or by the American Board of Oral and Maxillofacial Surgery by an applicant to satisfy the ten year rule without holding current board certification.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have parity among the remedies and allow proof of passage of either a specialty certification examination or passage of the Special Purpose Examination to satisfy the ten year rule, without requiring proof of board certification.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

##### §163.7. Ten Year Rule.

An applicant who has not passed an examination listed in §163.6(a) of this title (relating to Examinations Accepted for Licensure) for licensure within the ten-year period prior to the filing date of the application must:

(1) present evidence from a member board of the American Board of Medical Specialties or Bureau of Osteopathic Specialists, or by the American Board of Oral and Maxillofacial Surgery of passage [of current certification by a member board of the American Board of Medical Specialties or Bureau of Osteopathic Specialists, or by the American Board of Oral and Maxillofacial Surgery; obtained by passing], within the ten years prior to date of applying for licensure, a monitored:

- (A) specialty certification examination;
- (B) maintenance of certification examination; or
- (C) continuous certification examination.

(2) obtain through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board, including but not limited to the practice of medicine for at least six months under a faculty temporary license or six months in a training program approved by the board within twelve months prior to the application for licensure; or

(3) pass the Special Purpose Examination (SPEX) within the preceding ten years. The applicant must score 75 or better within three attempts.

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 September 22, 2014.

TRD-201404491

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: November 2, 2014

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



## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §166.2

The Texas Medical Board (Board) proposes amendments to §166.6, concerning Continuing Medical Education.

The amendments to §166.2 add language providing that a licensee will be presumed to have complied with minimum requirements related to continuing medical education (CME) set forth under subsection (a)(1) - (3) if the licensee is meeting the requirements of the Maintenance of Certification Program (MOC) set forth by a specialty or sub-specialty member board of the American Board of Medical Specialties (ABMS), and the member boards' MOC program mandates completion of CME credits that meet the minimum criteria set forth under subsection (a)(1) - (3). The remaining amendments represent general cleanup of the rule.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to allow for a more efficient method for licensees, who successfully complete ABMS member boards' MOC program requirements, to demonstrate satisfaction of certain minimum criteria under the board rules for CME, and to have rules that are accurate and better organized.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

#### *§166.2. Continuing Medical Education.*

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 credits of continuing medical education (CME) every 24 months. CME credits must be completed in the following categories:

(1) At least 24 credits every 24 months are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award; or

(E) approved by the board for medical ethics and/or professional responsibility courses only.

(2) At least two of the 24 formal credits of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular credit of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 24 credits for the 24-month period may be composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences not approved for formal CME, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(4) A physician who performs forensic examinations on sexual assault survivors must have basic forensic evidence collection training or the equivalent education. A physician who completes a CME course in forensic evidence collection that:

(A) meet the requirements described in paragraph (1)(A) - (C) of this subsection; or

(B) is approved or recognized by the Texas Board of Nursing, is considered to have the basic forensic evidence training required by the Health and Safety Code, §323.0045.

(5) A physician may complete one credit of formal continuing medical education, as required by paragraph (1) of this subsection, for each hour of time spent up to 12 hours, based on participation in a program sponsored by the board and approved for CME credit for the evaluation of a physician competency or practice monitoring.

(6) A physician whose practice includes the treatment of tick-borne diseases should complete CME in the treatment of tick-borne diseases that meet the requirements described in paragraph (1)(A) - (E) of this subsection.

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.

(1) A licensee may carry forward CME credits earned prior to a registration report which are in excess of the 48-credit biennial requirement and such excess credits may be applied to the following years' requirements.

(2) A maximum of 48 total excess credits may be carried forward and shall be reported according to the categories set out in subsection (a) of this section.

(3) Excess CME credits of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits were earned.

(c) A licensee shall be presumed to have complied with subsection (a)(1) - (3) of this section if:

(1) in the preceding 36 months the licensee becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists. This provision exempts the physician from all CME requirements under subsection (a)(1) - (3) of this

section, including the requirement for two credits [~~one credit~~] involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. This exemption is valid for one registration period only;[-]

(2) the licensee is meeting the Maintenance of Certification (MOC) program requirements set forth by a specialty or subspecialty member board of the American Board of Medical Specialties, and the member board's MOC program mandates completion of CME credits that meet the minimum criteria set forth under subsection (a)(1) - (3) of this section;

(3) the licensee is in a residency/fellowship training program, or has completed such training within six months prior to the registration expiration date; or

(4) the licensee is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).

(d) A physician may request in writing an exemption for the following reasons:

(1) catastrophic illness;

(2) military service of longer than one year's duration outside the state;

(3) medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the licensee, that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for CME.

(e) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(f) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed, subject to the approval of the board.

~~[(g) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).]~~

(g) [~~(h)~~] This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional credits of CME or of specific course subjects.

(h) [~~(i)~~] The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

~~[(j) Physicians in residency/fellowship training or who have completed such training within six months prior to the registration expiration date, will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.]~~

(i) [~~(k)~~] CME credits which are obtained during the 30 day grace period after the expiration of the licensee's permit to comply with the CME requirements for the preceding two years, shall first be credited to meet the CME requirements for the previous registration period and then any additional credits obtained shall be credited to meet the CME requirements for the current registration period.

(j) [~~(l)~~] A false report or false statement to the board by a licensee regarding CME credits reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051 - 164.053. A licensee

who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of \$500.

(k) [~~(m)~~] Administrative penalties for failure to timely obtain and report required CME credits may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 of this title (relating to Disciplinary Sanction Guidelines).

(l) [~~(n)~~] Unless exempted under the terms of this section, failure to obtain and timely report the CME credits on a registration permit application shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.3 of this title (relating to Penalties). Any administrative penalty imposed for failure to obtain and timely report the 48 credits of CME required for a registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.3 of this title.

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 September 22, 2014.

TRD-201404492  
Mari Robinson, J.D.  
Executive Director  
Texas Medical Board

Earliest possible date of adoption: November 2, 2014

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



## CHAPTER 190. DISCIPLINARY GUIDELINES SUBCHAPTER B. VIOLATION GUIDELINES

### 22 TAC §190.8

The Texas Medical Board (Board) proposes amendments to §190.8, concerning Violation Guidelines.

The amendment to §190.8 corrects the spelling of the term "meningococcal" in paragraph (1)(L)(iii)(II)(d).

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that contain correct spelling.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

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

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of



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

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

*§190.8. Violation Guidelines.*

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare.

Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) - (K) (No change.)

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

(i) - (ii) (No change.)

(iii) Notwithstanding the provisions of this subparagraph, establishing a professional relationship is not required for:

(I) (No change.)

(II) a physician to prescribe dangerous drugs and/or vaccines for a patient's close contacts if the physician diagnoses the patient with one or more of the following infectious diseases listed in items (-a-) - (-g-) of this subclause. For the purpose of this clause, a "close contact" is defined as: any person who provided care for the patient while the patient was symptomatic; or a member of the patient's household. The physician must document the treatment provided to the patient's close contact(s) in the patient's medical record. Such documentation at a minimum must include the close contact's name, drug prescribed, and the date that the prescription was provided.

(-a-) Chicken Pox;

(-b-) Influenza;

(-c-) Invasive Haemophilus influenzae Type

B;

(-d-) Meningococcal [Meningococcal] dis-

ease;

(-e-) Pertussis;

(-f-) Scabies; or

(-g-) Shingles.

(M) - (O) (No change.)

(2) - (7) (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 September 22, 2014.

TRD-201404493

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: November 2, 2014

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



## PART 10. TEXAS FUNERAL SERVICE COMMISSION

## CHAPTER 205. CEMETERIES AND CREMATORIES

### 22 TAC §§205.1 - 205.3, 205.6, 205.9, 205.11

The Texas Funeral Service Commission (the Commission) proposes to amend §§205.1 - 205.3, 205.6, 205.9, and 205.11, concerning Cemeteries and Crematories. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined an update to these rules was necessary to reflect the current requirements as determined by Texas Occupations Code Chapter 651 and Texas Health and Safety Code Chapter 716. The Commission intends the amended rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the rules updated and clarified.

Janice McCoy, Executive Director, has determined that for each year of the first five-year period this rules are in effect there will be no fiscal implication for state or local government, or local economies.

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

In addition, Ms. McCoy has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that funeral service providers and consumers will be informed of new requirements and the Commission's rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission 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 the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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 rules under this chapter.

No other statutes, articles, or codes are affected by these sections.

*§205.1. Cemetery License Requirements and Procedure.*

(a) All cemeteries that conduct business, other than those described in Texas Occupations Code, §651.353, are required to be licensed by the Commission [commission].

(b) The licensing fee for cemeteries shall accompany the application for licensure. [The amount of the licensing and renewal fees are posted on the commission's website at [www.tfse.state.tx.us](http://www.tfse.state.tx.us).]

(c) A license is valid for one year and is automatically renewed upon timely receipt of the renewal fee by the Commission [eommission].

(d) A cemetery that renews its license on or before the 30th day following the license expiration date shall pay, in addition to the renewal fee, a late payment penalty equal in amount to the renewal fee.

(e) A cemetery that fails to renew its license on or before the 30th day following the license renewal date may not renew the license and may not operate as a cemetery until receipt of a new license.

~~[(f) The license of a perpetual care cemetery is automatically renewed upon receipt by the commission of a timely filed renewal form.]~~

*§205.2. Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress.*

~~[(a) Section 711.012(b), Texas Health and Safety Code, authorizes the commission to promulgate rules to effectuate §711.041, Texas Health and Safety Code.]~~

~~[(b) Any [Section 711.041(a), Texas Health and Safety Code, provides that any] person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have, for the purposes usually associated with cemetery visits and during reasonable hours[, as determined under §711.041(b), Texas Health and Safety Code,] the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds.~~

~~[(c) The [Section 711.041(b), Texas Health and Safety Code, provides that the] owner or owners of lands surrounding a cemetery or private burial grounds may designate the route or routes of reasonable ingress and egress and reasonable hours of availability.~~

~~[(d) The term "owner or owners of lands surrounding a cemetery or private burial grounds" [as used in §711.041(b), Texas Health and Safety Code,] means any person, persons, entity, or entities that own lands that lie between a public road and a cemetery or private burial grounds that has no public ingress or egress irrespective of whether such lands are contiguous to the cemetery or private burial grounds or to the public road.~~

~~[(e) The Commission [eommission] finds that the term "reasonable hours" [as used in §711.041(b), Texas Health and Safety Code,] should be interpreted to mean 8:00 a.m. to 5:00 p.m. on any day of the week. However, [It is provided, however, that] the hours during the day and the days of the week during which ingress and egress shall be allowed may be more particularly circumscribed by an agreement reached or an order entered pursuant to subsections (i) - (n) of this section.~~

~~[(f) The phrase "purposes usually associated with cemetery visits" [as used in §711.041(1), Texas Health and Safety Code,] means a visit by any person or group of persons for the purpose of interring a person or persons in a cemetery or private burial grounds or for the purpose of paying respect to a person or persons interred in a cemetery or private burial grounds.~~

~~[(g) The use [by the Texas Legislature] of the word "reasonable" in the phrase "designate the routes of reasonable ingress and egress" [as set out in §711.041(b), Texas Health and Safety Code,] means:~~

~~(1) that an "owner or owners of land surrounding the cemetery or private burial grounds" may not designate a route or routes of~~

ingress and egress that discourages visits to a cemetery or private burial grounds during "reasonable hours" for the "purposes usually associated with cemetery visits" [as defined in subsections (e) and (f) of this section]; and

(2) that an "owner or owners of land surrounding a cemetery or private burial grounds" may not thwart the right of ingress and egress [guaranteed by §711.041, Texas Health and Safety Code,] by the imposition of liability insurance or other indemnification requirements that render impractical or impossible visits during "reasonable hours" for the "purposes usually associated with cemetery visits" [as defined in subsections (e) and (f) of this section].

(h) Within the framework provided by subsections (d) - (g) of this section, persons or entities [that] interested in establishing a visitation schedule and a route or routes of reasonable ingress and egress with respect to a particular cemetery or private burial grounds shall make contact with and negotiate with each owner or owners of lands that surround the cemetery or private burial grounds for the purpose of agreeing to and reducing to writing the visitation schedule and route or routes of reasonable ingress and egress to a cemetery or private burial grounds for which no public ingress and egress is available. The person or entities making contact with the owner or owners of land that surround such a cemetery or public burial grounds shall inform the executive director of the commission that such contact is being initiated.

(i) If the parties reach agreement during the negotiations prescribed by subsection (h) of this section, the persons or entities making contact with the owner or owners of lands shall file a written agreement signed by all parties with [the executive director of] the Commission [eommission].

(j) If the parties cannot reach agreement during the negotiations prescribed by subsection (h) of this section, any party to the negotiations may request [of the executive director of the commission] that the dispute be mediated pursuant to the Commission's Alternate Dispute Resolution Policy and Procedure [eommission's alternate dispute resolution policy and procedure] as set out in §207.1[.] of this title [relating to Examining Boards].

(k) If the mediation is successful, the mediated agreement shall be reduced to writing and filed with [the executive director of] the Commission [eommission].

(l) If the mediation is not successful, the Executive Director [executive director] shall propose to the Commission [eommission] the adoption of an order setting out a reasonable visitation schedule and a route or routes of reasonable ingress to the cemetery or private burial grounds for which no public ingress or egress is available.

(m) Notice and a copy of the proposed order will be sent by certified mail to all interested parties no less than 30 days prior to the Commission [eommission] meeting at which the adoption of an order will be considered. At the meeting at which the adoption of an order will be considered, each affected party will be given an opportunity to offer testimony with respect to the proposed order. [Subject to expansion by the commission on the day of the meeting, time limits on testimony shall be set by the executive director in the notice accompanying a copy of the proposed order.]

(n) After consideration of the proposed order and any testimony taken, the commission Commissioners may adopt the order as proposed, may adopt the order with changes, or may defer action to a future meeting. An order adopted by the Commission [eommission] under this section is final as of the date of the Commission's [eommission's] adoption of the order, as proposed or with changes, at a meeting. A copy of the Commission's [eommission's] final order will be sent to the parties by certified mail.

*§205.3. Crematory License Requirement and Procedure.*

(a) The crematory establishment license application shall be on a form furnished by the Commission [~~eommission~~] and shall contain all information required by Texas Occupations Code, §651.657, including:

(1) a statement that all operators of the cremation chamber are certified by a reputable organization approved by the Commission [~~eommission~~]; and

(2) the names of all persons certified to operate the cremation chamber.

(b) The completed application, including all required documentation, and applicable fee shall be received [~~paid~~] before the Commission [~~eommission~~] inspects the crematory establishment.

(c) A license is valid for a period of one year.

~~[(d) The license may be renewed by filing with the commission a renewal application accompanied by the renewal fee and the Crematory Annual Report required by Texas Occupations Code, §651.658(a)(1) and §205.9 of this chapter (relating to Crematory Annual Report, Extensions for Good Cause, and Late Fees).]~~

~~[(e) The renewal application must contain the information required by Texas Occupations Code, §651.657 and subsection (a) of this section or a statement that the information previously furnished has not changed.]~~

~~[(f) The Commission [eommission] may not renew an application until the applicant has met the requirements of Texas Occupations Code, §651.658(a).~~

~~[(g) A crematory that fails to renew its license by its renewal date shall pay, in addition to the renewal fee, a late payment penalty equal in amount to the renewal fee.~~

~~[(h) A crematory may not operate if a license is expired for over 30 days until the renewal fee and late payment penalty are paid.~~

~~[(i) The license that is not renewed within 30 days of its expiration date may be renewed by paying the renewal fee and late payment penalty.]~~

*§205.6. [~~Contracts for~~] Direct Cremation Services.*

An authorizing agent authorized to dispose of the remains of a deceased individual may contract directly for cremation services if the crematory is also licensed as a funeral establishment or if the authorizing agent receives written authorization from either a Justice [~~justice~~] of the Peace [~~peace~~] or Medical Examiner [~~medical examiner~~] of the county in which the death occurred.

*§205.7. Waiting Period for Cremation.*

Cremation may not occur sooner than 48 hours following the time of death indicated on the death certificate unless the waiting period is waived in writing by a Justice [~~justice~~] of the Peace or [~~peace,~~] a Medical Examiner of [~~medical examiner in~~] the county in which the death occurred; or by a court order.

*§205.9. Crematory Annual Report, Extensions for Good Cause, and Late Fees.*

(a) The annual report required by Texas Occupation Code §651.658 shall cover the period from January 1 to December 31.

(b) The report must be postmarked by January 30 of the [~~following~~] year following the year for which the report is due.

(c) The Executive Director [~~eommission~~] shall grant an extension for filing the annual report for no more than 60 days upon proof of good cause.

(d) Good cause for purposes of [~~Texas Occupation Code §651.658(e) and~~] subsection (c) of this section is an event beyond the control of the crematory owner or operator that prevents the owner or operator from timely completing and filing the annual report.

(e) Requests for extensions of time to file the annual report based on good cause will not be approved if received by the Commission [~~eommission~~] later than January 4 15 following [~~the end of~~] the year for which the report is due.

(f) A \$100 late fee will be imposed for each day a crematory establishment fails to submit the annual report if the Executive Director [~~eommission~~] has not granted an extension of time for filing the report. The Commission [~~eommission~~] has no authority to waive or reduce the late fee.

*§205.11. Prerequisites for Cremation.*

~~[(a) Health and Safety Code §716.051 provides that a crematory may cremate deceased human remains upon receipt of a cremation authorization form signed an authorizing agent and either a death certificate or other death record issued by a local registrar reflecting that the deceased human remains may be cremated.]~~

~~[(b) Three [As a practical matter, however, three] documents are required to accomplish the cremation of cremate deceased human remains:~~

~~(1) a cremation authorization form signed by the person responsible for making arrangements for final disposition;~~

~~(2) a death certificate or other death record indicating that the deceased human remains may be cremated; and~~

~~(3) a burial transit permit as required by 25 TAC §181.2.~~

~~[(c) The Department of State Health Services (DSHS) remains authorized to regulate the transportation of dead bodies under Health and Safety Code, §694.001. DSHS 25 TAC §181.2 (relating to Assuming Custody of Body) requires a funeral director or person acting as such to obtain a burial-transit permit from the local registrar if a body is to be cremated.]~~

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 September 18, 2014.

TRD-201404459

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 936-2469



## CHAPTER 206. GUARANTEED STUDENT LOANS

### 22 TAC §206.1

The Texas Funeral Service Commission (the Commission) proposes to amend §206.1, concerning Default and Repayment Agreements. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined an update to these rules were necessary to reflect the current requirements as determined by Texas Occupations Code Chapter 651.

The Commission intends the new rule to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the rules updated and clarified.

Janice McCoy, Executive Director, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implication for state or local government, or local economies.

Ms. McCoy 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. McCoy has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that funeral service providers and consumers will be informed of new requirements and the Commission's rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission 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 the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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.

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

*§206.1. Default and Repayment Agreements.*

~~[Applicability of Education Code.]~~ All individual license renewals are subject to Texas Education Code, §7.491 relating to defaults on guaranteed student loans and repayment agreements.

(1) The Commission [~~eommission~~] may issue an initial license to a person who is in default on a guaranteed student loan but shall not renew the license, unless the applicant furnishes a certification from the Texas Guaranteed Student Loan Corporation that the licensee has entered into a repayment plan on the loan or that the licensee is no longer in default on the loan.

(2) The Commission [~~eommission~~] shall not renew the license of a person who is in default on a guaranteed student loan, unless the renewal is the first renewal following the Commission's [~~eommission's~~] receipt of notice of the licensee's default or the licensee has furnished the certification described in paragraph (1) of this section.

(3) The Commission [~~eommission~~] shall not renew the license of a person who defaults on a repayment agreement on a defaulted loan, unless the Commission [~~eommission~~] receives a certification that the licensee has entered into another repayment agreement or that the licensee is no longer in default.

(4) The Commission [~~eommission~~] shall give the licensee an opportunity for hearing before taking action concerning the non-renewal of a license for default on a guaranteed student loan or a repayment agreement.

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 September 18, 2014.

TRD-201404460

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 936-2469



## CHAPTER 207. ALTERNATIVE DISPUTE RESOLUTION

### 22 TAC §207.1

The Texas Funeral Service Commission (the Commission) proposes to amend §207.1, concerning Alternative Dispute Resolution. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined an update to these rules were necessary to reflect the current requirements as determined by Texas Occupations Code Chapter 651. The Commission intends the amended rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the rules updated and clarified.

Janice McCoy, Executive Director, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implication for state or local government, or local economies.

Ms. McCoy 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. McCoy has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that funeral service providers and consumers will be informed of new requirements and the Commission's rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission 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 the proposal may be submitted to Mr. Kyle Smith at PO Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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.

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

*§207.1. Alternative Dispute Resolution Policy and Procedure.*

(a) ~~[Policy.]~~ The ~~[Texas Funeral Service]~~ Commission encourages the resolution and early settlement of all contested matters through voluntary settlement procedures. ~~[Commission employees shall implement this policy.]~~

(b) ~~[Definitions.]~~ The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ADR--Alternative Dispute Resolution.

(2) ~~[Alternative dispute resolution director or]~~ ADR procedure--A non-judicial and informally conducted forum for the voluntary settlement of contested ~~matters~~ ~~[matter]~~ through intervention of an impartial third party.

(3) ~~[Alternative dispute resolution director or]~~ ADR director--The member of staff designated by the Executive Director ~~[director of the agency office empowered by the commission]~~ to coordinate and oversee ADR procedures and mediators.

(4) Contested matter--A complaint by a consumer or other interested party against a licensee or establishment or a complaint opened by the Commission [A request for an order or other formal or informal authorization from the commission that is opposed].

(5) Mediator--The person appointed by the ADR Director ~~[office director]~~ to preside over ADR proceedings regardless of which ADR method is used.

(6) Parties--The complainants, respondents, agencies, employees, managers, supervisors, licensees or consumers ~~[customers]~~ who are in conflict.

(7) Participants--The Executive Director ~~[executive director]~~, the Staff Attorney, ~~[agency legal counsel]~~ the complainant, the respondent, the person who timely filed hearing requests which gave rise to the dispute or if parties have been named, the named parties.

(8) Private mediator--A person in the profession of mediation who is not a Texas state employee and who has met all the qualifications prescribed by Texas law for mediators.

(c) ~~[Referral of Contested Matter for Alternative Dispute Resolution Procedures.]~~ The ~~Commission~~ ~~[commission]~~ or the ADR director may seek to resolve a contested matter through any ADR procedure. Such procedures may include, but are not limited to, those applied to resolve matters pending at the State Office of Administrative Hearing (SOAH) ~~[and in the state's district courts].~~

(d) Appointment of Mediator.

(1) For each matter referred for ADR procedures, the ADR Director ~~[director]~~ shall assign a mediator, unless the participants agree upon the use of a private mediator. The ADR Director ~~[director]~~ may assign a substitute or additional mediator to a proceeding as the ADR Director ~~[director]~~ deems necessary.

(2) A private mediator may be hired for ~~[commission]~~ ADR procedures provided that:

(A) the participants unanimously agree to use a private mediator;

(B) the participants unanimously agree to the selection of the person to serve as the mediator;

(C) the mediator agrees to be subject to the direction of the ~~[commission's]~~ ADR Director ~~[director]~~ and to all time limits imposed by the Director ~~[director]~~, the SOAH Administrative Law Judge (ALJ) ~~[judge]~~, statute or ~~rules~~ ~~[regulation].~~

(3) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon by the participants, and shall be paid directly to the mediator. In no event, however, shall any such costs be apportioned to a governmental subdivision or entity that is a statutory party to the hearing.

(4) All mediators in ~~Commission~~ ~~[commission]~~ mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

(e) Qualifications of Mediators.

(1) The ~~Commission~~ ~~[commission]~~ shall establish a list of mediators to resolve contested matters through ADR procedures.

(A) To the extent practicable, each mediator shall receive 40 hours of formal training in ADR procedures through programs approved by the ADR Director ~~[director]~~.

(B) Other individuals may serve as mediators on an ad hoc basis in light of particular skills or experience which will facilitate the resolution of individual contested matters.

(C) Each mediator shall have some knowledge in the area of the contested matter.

(2) SOAH mediators, employees of other agencies who are mediators and private pro bono mediators may be assigned to contested matters as needed.

~~[(A) Each mediator shall first have received 40 hours of Texas mediation training as prescribed.]~~

~~[(B) Each mediator shall have some knowledge in the area of the contested matter.]~~

~~[(C) If the mediator is a SOAH ALJ [judge], that person will not also sit as the judge ALJ for the case if the contested matter goes to public hearing.]~~

(f) Commencement of ADR.

(1) The ~~Commission~~ ~~[commission]~~ encourages the resolution of disputes at any time, whether under this policy and procedure or not. ADR procedures under this policy may begin, at the discretion of the ADR Director ~~[director]~~, Executive Director or Staff Attorney ~~[anytime once deemed administratively complete and at least one letter of appeal has been filed with commission].~~

(2) Upon unanimous motion of the parties and the discretion of the ALJ ~~[judge]~~, the provisions of this subsection may apply to

contested hearings. In such cases, it is within the discretion of the ALJ [judge] to continue the hearing to allow use of the ADR procedures.

(g) [~~Stipulations.~~] When ADR procedures do not result in the full settlement of a contested matter, the participants, in conjunction with the mediator, shall limit the contested issues which will be tried at SOAH through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the ALJ [judge] assigned to conduct the hearing on the merits and shall be included in the hearing record.

(h) [~~Agreements.~~] Agreements of the participants reached as a result of ADR must be in writing and are enforceable in the same manner as any other written contract.

(i) Confidentiality of Communications in Alternative Dispute Resolution Procedures.

(1) Except as provided in subsections (3) and (4) of this section a communication relating to the subject matter made by the participants [partieipant] in an ADR procedure whether before or after the institution of formal proceedings, is confidential, is not subject to disclosure and may not be used as evidence in any further proceedings.

(2) Any notes or record made of an ADR procedure are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

~~[(3) An oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable independent of the procedure.]~~

(3) [(4)] If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may; be presented to the ALJ [judge] to determine[; in camera;] whether the facts, circumstances and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(4) [(5)] The mediator may not, directly or indirectly, communicate with the ALJ [judge] or any Commissioner, concerning [commissioner, of] any aspect of ADR negotiations made confidential by this section.

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

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

TRD-201404461

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 936-2469



## CHAPTER 209. ETHICAL STANDARDS FOR PERSONS LICENSED BY THE COMMISSION

### 22 TAC §209.1

The Texas Funeral Service Commission (the Commission) proposes to amend §209.1, concerning Ethical Standards. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined an update to these rules were necessary to reflect the current requirements as determined by Texas Occupations Code, Chapter 651. The Commission intends the amended rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the rules updated and clarified.

Janice McCoy, Executive Director, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implication for state or local government, or local economies.

Ms. McCoy 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. McCoy has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that funeral service providers and consumers will be informed of new requirements and the Commission's rules will be updated to reflect all recent legislative changes.

The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The Commission 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 the proposal may be submitted to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to [info@tfsc.texas.gov](mailto:info@tfsc.texas.gov). Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; Texas Government Code, §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.

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

#### §209.1. Ethical Standards.

[(a) Individuals licensed by the commission serve the consumer during one of the most demanding periods that a consumer will experience. Many services provided require knowledge in the mortuary arts and sciences which most bereaved families do not have. Licensees should strive to attain the highest degree of ethical and professional conduct using honesty, candor and respect.]

[(b) Applicability. These policies are intended to set forth ethical precepts to which individuals licensed by the commission should aspire to achieve. These standards are not intended to be used by parties to litigation over whether or not they have been observed. State and federal law and rules dictate the minimum standards to which each

individual licensee must conform. These policies are adopted to set a higher goal and standard of ethics and professionalism which individual licensees should strive to attain, because it is right and just.]

(a) [(e)] [Competency.] The licensee shall be knowledgeable of and adhere to all applicable federal and state [the] laws, [the] rules, [applicable] codes, and all procedures established by the Commission [commission for licensees]. It is the obligation of the licensee to exercise reasonable judgment and skill in the performance of all duties and work performed as a licensee.

(b) A licensee who performs his or her duties in a negligent or incompetent manner, or does not perform his or her duties with honesty, integrity, or in a trustworthy manner violates Texas Occupation Code §651.459.

(c) [(d)] Integrity.

(1) A licensee shall be honest and trustworthy in the performance of all duties and work performed as a licensee and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission.

(2) A licensee shall refrain from engaging in acts or practices that constitute threats, coercion, or extortion.

(3) A licensee shall respect a consumer's right of personal choice and decisions with regard to making arrangements.

(d) [(e)] [Interest.] The primary duty [interest] of the licensee is to ensure compliance with all applicable federal and state laws, rules, and codes [the Act, the rules, and all applicable codes]. The licensee's position[, in this respect,] should be clear to all parties concerned while in the performance of all duties and work performed as a licensee.

(e) [(f)] Specific Rules of Conduct.

(1) A licensee shall provide services to client families without regard to religion, race, color, national origin, sex, sexual orientation or disability.

(2) A licensee shall provide to consumers and prospective consumers, where applicable, all statutorily required documentation, pricing information, and any other information concerning funerals, cremations, burials, pricing, merchandise, and services, including a consumer brochure and retail price list, in a manner which is neither unfair nor deceptive.

(3) A licensee shall protect from disclosure confidential information pertaining to the deceased or the family of the deceased.

(4) A licensee shall account properly for and remit any monies, documents, or personal property that belongs to others that comes into the licensees' possession.

(5) A licensee shall not participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose, which he/she knew or should have known was the evasion of any provision of the laws[-] or the rules[-] or the standards adopted by of the Commission [commission].

(6) A licensee shall not provide information he or she knew or should have known was [knowingly furnish] inaccurate, deceitful, or misleading [information] to the Commission or a consumer while performing as a licensee.

(7) A licensee shall not engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing as a licensee.

(8) A licensee shall not solicit business or offer inducement to secure or attempt to secure business except where authorized by law.

(9) A licensee shall not violate any statute, ordinance, or regulation affecting the handling, custody, care or transportation of a decedent.

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 September 18, 2014.

TRD-201404462

Janice McCoy

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 936-2469



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 200. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

##### 25 TAC §§200.1 - 200.4, 200.6 - 200.8

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§200.1 - 200.4 and §§200.6 - 200.8, concerning the reporting of preventable adverse events.

##### BACKGROUND AND PURPOSE

The amendments are necessary to comply with the Senate Bill (SB) 203, 81st Legislature, Regular Session, 2009, that requires facilities to report preventable adverse events.

SB 203 amended the Health and Safety Code, Chapter 98, Reporting of Health Care-Associated Infections and Preventable Adverse Events, §98.106, Departmental Summary, that the department will compile and make available to the public a summary of health care facilities that reported preventable adverse events by placing this information on the department's website. The department is required to make available to the public a report that includes types of preventable adverse events by facility including the number of deaths or severe harm that resulted while being cared for in a health care facility.

##### SECTION BY SECTION SUMMARY

An amendment to §200.1 adds definitions to clarify reporting of preventable adverse events.

An amendment to §200.2 clarifies that facilities shall submit preventable adverse event data as specified in §§200.2 - 200.8.

An amendment to §200.3 describes how facilities shall report certain facility specific and preventable adverse event data.

An amendment to §200.4 will clarify how to report NHSN-reported preventable adverse events and designated preventable adverse events.

An amendment to §200.6 defines when to initiate reporting of preventable adverse event data.

An amendment to §200.7 includes the scheduled list of preventable adverse events to be reported by the facilities.

An amendment to §200.8 lists that preventable adverse event data submitted may be corrected during the corrections time schedule.

#### FISCAL IMPACT

Ms. Janna Zumbrun, Assistant Commissioner, Division for Disease Control and Prevention Services, has determined that for each year for the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Ms. Zumbrun has also determined that for each year of the first five years the sections are in effect, there will be costs to micro-businesses and small businesses such as ambulatory surgical centers or hospitals. The reporting of preventable adverse events places additional resource burden on reporting facilities. Additional staff will be needed to enter and assure quality of the data. For certain facilities, software modifications may be needed in order to efficiently report preventable adverse events to the State. The Texas Hospital Association sought feedback from stakeholders that estimated an annual fiscal impact of \$250,000 per year to implement and maintain reporting requirements for preventable adverse events.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the rules as proposed. There will not be an impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Zumbrun has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is for the public to be knowledgeable and informed of the number of deaths and severe harm events occurring while being cared for in a health care facility resulting in or associated with preventable adverse events during the reporting period.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments or questions on the proposal may be submitted to Vickie Gillespie, Preventable Adverse Events Clinical Analyst, Healthcare Safety Program, Division of Disease Control and Prevention Services, Department of State Health Services, Mail Code 1960, P.O. Box 149347, Austin, Texas, 78714-9347, (512) 776-6878 or [Vickie.Gillespie@dshs.state.tx.us](mailto:Vickie.Gillespie@dshs.state.tx.us). Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. A public hearing will not be held.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the states agencies' authority to adopt.

#### STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §98.101, which authorizes the Executive Commissioner of the Health and Human Services Commission to implement Chapter 98 by adopting rules; §98.105 which authorizes the Executive Commissioner to modify which procedures are reportable; §98.108 which authorizes the Executive Commissioner to establish the frequency of reporting by rule; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commission 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 amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 98 and 1001.

#### §200.1. Definitions.

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

- (1) AHRQ--Agency for Healthcare Research and Quality.
- (2) [(4)] Ambulatory surgical center--A facility licensed under Texas Health and Safety Code, Chapter 243.
- (3) APGAR Score--A test designed to quickly evaluate a newborn's physical condition and to determine any immediate need for extra medical or emergency care.
- (4) [(2)] Central line--An intravascular catheter that terminates at or close to the heart or in one of the great vessels which is used for infusion, withdrawal of blood or hemodynamic monitoring.
- (5) [(3)] CMS--Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services.
- (6) [(4)] Comments--Notes or explanations submitted by the health care facilities concerning the department's compilation and summary of the facilities' data that is made available to the public as described in the Texas Health and Safety Code, §98.106.
- (7) [(5)] Data--Facility and patient level information reported to the department for the purposes of monitoring health care-associated infections and preventable adverse events.



(8) [(6)] Data summary--Facility level information prepared by the department for each health care facility required to report in this state to facilitate comparisons of risk-adjusted infection rates and preventable adverse events.

(9) [(7)] Department--Department of State Health Services.

(10) [(8)] Device days--The number of patients in a special care setting who have one or more central lines for each day of the month, determined at the same time each day of the reporting quarter.

(11) [(9)] Facility contact--Person identified by the health care facility responsible for coordinating communications related to data submission, verification and approval of data summary.

(12) [(40)] Facility Identification Number--The unique, distinguishable, uniform number used to identify each health care facility.

(13) Fall--A sudden, unintended, uncontrolled downward displacement of a patient's body to the ground or other object.

(14) [(44)] General hospital--A hospital licensed under Texas Health and Safety Code, Chapter 241, or a hospital that provides surgical or obstetrical services and that is maintained or operated by the state.

(15) [(42)] Great vessels--Primary blood vessels to include aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, common femoral veins, and in neonates, the umbilical artery or umbilical vein.

(16) [(43)] Health care-associated infection (HAI)--Localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of the delivery of health care to the patient.

(17) [(44)] Health care-associated infection data--Patient level information identifying the patient, procedures and events required by this chapter, infections resulting from those procedures or events, and causative pathogens when laboratory confirmed.

(18) [(45)] Health care facility or facility--A general hospital or ambulatory surgical [surgery] center.

(19) [(46)] ICD-CM--The International Classification of Diseases, Clinical Modification that is used to code and classify morbidity data from the inpatient and outpatient records of hospitals, ambulatory surgical centers, and physician offices.

(20) Incident--A patient safety event that reached the patient, whether or not the patient was harmed.

(21) [(47)] Inpatient Treatment--An admission to an acute care hospital of greater than 24 hours for medical treatment [of a post operative surgical site infection].

(22) Medical Gas--A gas used in the medical treatment of a patient such as oxygen, nitrogen or nitrous oxide.

(23) Mild Harm--Bodily or psychological injury results in the minimal symptoms or loss of function, or injury limited to the additional treatment, monitoring and/or increased length of stay.

(24) Moderate Harm--Bodily or psychological injury adversely affecting functional ability or quality of life, but not at the levels of severe harm.

(25) Near Miss--A patient safety event that did not reach the patient.

(26) [(48)] NHSN--[Federal] Centers for Disease Control and Prevention's National Healthcare Safety Network or its successor.

(27) NHSN-reported PAE--A preventable adverse event as defined by NQF or CMS which is reported through NHSN or its successor.

(28) NQF--National Quality Forum.

(29) No Harm--A patient safety incident that reached the patient, but no harm was evident.

(30) PSO--Patient safety organization.

(31) Perinatal--The period from the 20th week of gestation through 4 weeks postpartum.

(32) [(49)] Pediatric and adolescent hospital--A general hospital that specializes in providing services to children and adolescents, as defined in Texas Health and Safety Code, §241.003.

(33) Pressure Ulcer--Localized injury to the skin and/or underlying tissue that usually occurs over a bony prominence as a result of pressure, or pressure in combination with shear and/or friction.

(34) [(20)] PAE--Preventable adverse event. Examples of PAEs are given in Texas Health and Safety Code, §98.1045.

(35) [(24)] Reporting quarters--First quarter: January 1 through March 31; Second quarter: April 1 through June 30; Third quarter: July 1 through September 30; Fourth quarter: October 1 through December 31.

(36) [(22)] Risk adjustment--A statistical method to account for a patient's severity of illness and the likelihood of development of a health care-associated infection (e.g., duration of procedure in minutes, wound class, and American Society of Anesthesiology (ASA) score).

(37) SRE--Serious Reportable Event. Also known as a "never event."

(38) Severe Harm--Bodily or psychological injury that interferes significantly with the functional ability or quality of life.

(39) [(23)] Special care setting--A unit or service of a general, pediatric or adolescent hospital that provides treatment to inpatients who require extraordinary care on a concentrated and continuous basis. The term includes an adult intensive care unit, a burn intensive care unit and a critical care unit.

(40) TxHSN--Texas Health Care Safety Network.

(41) TxHSN-reported PAE--A preventable adverse event as defined in §200.7 of this title (relating to Schedule for HAI and PAE Reporting) reported through the TxHSN portal or its successor.

(42) Unsafe Condition--Any circumstance that increases the probability of a patient safety event.

(43) [(24)] Urinary catheter--As defined by the Centers for Disease Control and Prevention's National Healthcare Safety Network at www.cdc.gov/nhsn or its successor.

(44) [(25)] Urinary tract infection (UTI)--As defined by the Centers for Disease Control and Prevention's National Healthcare Safety Network at www.cdc.gov/nhsn or its successor. [A UTI associated with an indwelling urinary catheter is a catheter associated urinary tract infection (CAUTI).]

(45) [(26)] Validation--The process of comparing data received by the department [submissions] to original patient and facility records to ascertain the accuracy of reported data compared to the case definition [that data submission processes are accurate].

(46) [(27)] Verification--Review of data submitted electronically to assure completeness and internal consistency.

§200.2. *General Reporting Guidelines for Health Care-Associated Infection and Preventable Adverse Event Data.*

(a) All general hospitals and ambulatory surgical centers in operation during any part of a reporting quarter described in §200.1 of this title (relating to Definitions) shall submit health care-associated infection (HAI) data, including whether the HAI contributed to a patient's death, the death of a patient, and designated preventable adverse event (PAE) data as specified in §§200.3 - 200.7 of this title to the Centers for Disease Control and Prevention's National Healthcare Safety Network (NHSN) or its successor. TxHSN-reported PAE information as specified in §200.6 of this title (relating to When to Initiate Reporting) shall be reported via the TxHSN portal or its successor.

(b) - (d) (No change.)

(e) The facility shall ensure that the department has accurate email and phone information for a facility contact. [~~Facilities may provide institutional contact information (e.g., IP@hospital.org, 1-800-INFECTS).~~] The facility shall ensure that communications from the department are continuously monitored even if the position is vacant for any reason (vacation, illness, etc.).

§200.3. *How to Report.*

(a) Facilities shall submit HAI and NHSN-reported PAEs, including whether the HAI or NHSN-reported PAE contributed to a patient's death, and designated PAE data required by this section to NHSN or its successor. Health care facilities shall report TxHSN-reported PAEs through the TxHSN portal or its successor.

(b) Facilities shall comply with the process prescribed by this chapter and NHSN or its successor to allow the department access to HAI data, including whether the HAI contributed to a patient's death, and/or [and] designated PAE data as specified in §§200.3 - 200.7 of this title.

(c) Facilities shall use their facility identification number to identify their facility in the electronic data and correspondence with the department. Each facility meeting the definition of ambulatory surgical center or general hospital as defined in §200.1(2) [~~§200.1(1)~~] and (14) [~~(14)~~] of this title (relating to Definitions) shall have its own facility identification number.

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

(d) The department shall notify the facility contact by email 90 calendar days in advance of any change in requirements for reporting HAI data, including whether the HAI contributed to a patient's death, and designated PAE data.

(e) Facilities shall report HAI and NHSN-reported PAE data on patients identified with a surgical site infection associated with a procedure listed in §200.4 of this title (relating to Which Events to Report). Facilities shall report TxHSN-reported PAE data as defined in §200.4 and §200.6 of this title.

(1) For HAI reporting, if [H] the facility treating the patient performed the procedure, the facility shall report the infection to NHSN or its successor according to the surveillance methods described by NHSN or its successor and this chapter. For NHSN-reported PAE reporting, if the event occurred in the facility treating the patient, the facility shall report the event to NHSN or its successor according to the surveillance methods described by NHSN or its successor and this chapter.

(2) For PAE reporting, TxHSN-reported PAEs identified at the same facility that the PAE occurred, shall be reported through the TxHSN portal or its successor as described in this chapter.

(3) [(2)] For HAI and NHSN-reported PAE reporting, if [H] the facility treating the patient did not perform the procedure [surgery], the treating facility shall notify the facility that performed the procedure, document the notification, and maintain this documentation for audit purposes. The facility that performed the procedure shall verify the data related to the infection. The performing facility [SSI and designated PAE and] shall report the HAI or NHSN-reported PAE [infection] to NHSN or its successor according to the surveillance methods described by NHSN or its successor and this chapter.

(4) For TxHSN-reported PAEs, if the facility that identified the PAE is not the facility responsible for the event, the facility that identified the PAE shall notify the facility where the event occurred, document the notification, and maintain this documentation for audit purposes. The facility in which the event occurred shall report the PAE to TxHSN or its successor according to the methods described by the department and this chapter.

§200.4. *Which Events to Report.*

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

(f) Facilities shall report whether the HAI or the NHSN-reported PAE contributed to a patient's death either directly or by exacerbating an existing disease condition which then led to death.

(g) General hospitals and ambulatory surgical centers shall report any of the following preventable adverse events involving the facility's patient.

(1) A health care-associated adverse condition or event for which the Medicare program will not provide additional payment to the facility under a policy adopted by the federal Centers for Medicare and Medicaid Services.

(2) An event included in the list of adverse events identified by the National Quality Forum.

(3) The executive commissioner may exclude an adverse event from the reporting requirement if the executive commissioner, in consultation with the advisory panel, determines that the adverse event is not an appropriate indicator of a preventable adverse event.

(h) [(g)] Facilities shall also report denominator data as indicated in TxHSN protocols for TxHSN-reported PAEs. For [f] the HAI events identified in this section for calculation of risk adjusted infection rates as required in Texas Health and Safety Code, §98.106(b),[-] NHSN protocols shall be used for the determination of denominator data for HAI and NHSN-reported PAEs. The following facility information shall be entered by the facility for each reporting period.

(1) Number of beds.

(2) Number of surgeries or invasive procedures performed during the reporting period.

(3) Number of patient days.

(i) If a facility has no HAI and/or PAE during the reporting period, facilities shall report this information through NHSN for HAI and NHSN-reported PAEs. Facilities shall report the absence of TxHSN-reported PAEs through the TxHSN portal or its successor.

§200.6. *When to Initiate Reporting.*

(a) All health care facilities who meet the criteria in §200.4 of this title (relating to Which Events to Report) shall enroll in NHSN within 90 calendar days of the designation of NHSN as the secure electronic interface to report HAI or NHSN-reported PAE data. In addition, all health care facilities shall notify the department to obtain TxHSN user accounts and report TxHSN-reported PAEs through TxHSN or

its successor. Facilities will be required to do this within 90 calendar days of when TxHSN-reported PAEs are required to be reported or for newly reporting facilities, within 90 days of becoming eligible to report TxHSN-reported PAEs.

(b) - (g) (No change.)

§200.7. *Schedule for HAI and PAE Reporting.*

(a) - (c) (No change.)

(d) Health care facilities shall begin reporting TxHSN-reported PAEs data as outlined starting on January 1, 2015.

(1) Facilities will report the following PAEs effective January 1, 2015.

(A) Surgeries or invasive procedures involving a surgery on the wrong site, wrong patient, wrong procedure or a foreign object retained after surgery.

(B) Patient death or severe harm associated with unsafe administration of blood or blood products.

(C) Patient death or severe harm associated with a fall in a health care facility resulting in a fracture, dislocation, intracranial injury, crushing injury, burn or other injury.

(D) Post-operative death of an ASA Class 1 Patient.

(E) Discharge or release of a patient of any age, who is unable to make decisions, to someone other than an authorized person.

(F) Perinatal death or severe harm (maternal or neonatal) associated with labor or deliver in a low-risk pregnancy while being cared for in a health care facility.

(G) Patient death or severe harm resulting from failure to follow up or communicate laboratory, pathology or radiology test results.

(H) Any incident in which systems designated for oxygen or other gas to be delivered to a patient contains no gas, wrong gas, or are contaminated by toxic substances.

(I) Patient death or severe harm associated with use of physical restraints or bedrails while being cared for in a health care facility.

(J) Abduction of a patient of any age.

(K) Sexual abuse or assault of a patient within or on the grounds of a health care facility.

(L) Patient death or severe harm of a patient resulting from a physical assault that occurs within or on the grounds of a health care facility.

(M) Patient death or severe harm resulting from the ir-retrievable loss of an irreplaceable biological specimen.

(N) Vascular Catheter-Associated Infection.

(2) Facilities will report the following PAEs effective January 1, 2016.

(A) Stage III, Stage IV or Unstageable pressure ulcer acquired after admission/presentation to a health care facility.

(B) Patient death or severe harm associated with patient elopement.

(C) Patient suicide, attempted suicide or self-harm that results in severe harm, while being cared for in a health care facility.

(D) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist or other licensed health care provider.

(E) Deep Vein Thrombosis (DVT) or Pulmonary Embolism (PE) after total knee replacement or after hip replacement.

(F) Patient death or severe harm associated with an electric shock while being cared for in a health care facility.

(G) Patient death or severe harm associated with a burn incurred from any source while being cared for in a health care facility.

(H) Iatrogenic Pneumothorax with venous catheterization.

(I) Patient death or severe harm associated with the introduction of a metallic object into the MRI area.

(3) Facilities will report the following PAEs effective January 1, 2017.

(A) Patient death or severe harm associated with intravascular air embolism that occurs while being cared for in a health care facility.

(B) Poor glycemic control resulting in diabetic ketoacidosis.

(C) Poor glycemic controls resulting in nonketonic hyperosmolar coma.

(D) Poor glycemic control resulting in hypoglycemic coma.

(E) Poor glycemic control resulting in secondary diabetes with ketoacidosis.

(F) Poor glycemic control resulting in secondary diabetes with hyperosmolarity.

(G) Artificial insemination with the wrong donor sperm or wrong egg.

(H) Patient death or severe harm associated with the use of contaminated drugs/devices or biologics provided by the health care facility.

(I) Patient death or severe harm associated with the use or function of a device in patient care, in which the device is used or functions other than as intended.

(J) Patient death or severe harm associated with a medication error.

(K) Surgical site infections following a spinal procedure, shoulder procedure, elbow procedure, laparoscopic gastric bypass, gastroenterostomy, laparoscopic gastric restrictive surgery or cardiac implantable electronic device.

(4) Amendments to this list of PAEs may be adopted at the discretion of the executive commissioner as recommended by CMS and NQF.

§200.8. *Verification of Health Care-Associated Infection and Preventable Adverse Event Data and Correction of Errors.*

(a) (No change.)

(b) Correction of Errors and Disputes.

(1) Facilities shall correct all identified errors, including data determined to be missing, and resubmit the corrected data through NHSN or its successor for HAI and NHSN-reported PAEs. Facilities shall correct data for TxHSN-reported PAEs through the TxHSN portal or its successor.

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

(4) Data corrections that occur following publication of a data summary shall be submitted to NHSN or its successor for HAI and NHSN-reported PAEs. Data corrections for TxHSN-reported PAEs that occur following publication of a data summary shall be submitted through TxHSN or its successor.

(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 September 22, 2014.

TRD-201404495

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 776-6972



## PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

### CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

#### 25 TAC §703.11, §703.13

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §703.11 and §703.13, regarding matching fund and audit requirements.

#### BACKGROUND AND JUSTIFICATION

The Institute permits a grant recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, to credit toward the grant recipient's matching funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the grant recipient and the five percent (5%) indirect cost limit imposed by §102.203(c), Texas Health and Safety Code. The proposed amendment to §703.11(b) provides guidance for calculating the federal indirect cost rate applicable for subcontracted work on the grant project.

The Institute requires grant recipients that expend \$500,000 or more in state awards during its fiscal year to obtain an annual audit as a condition of the grant award. The purpose of the proposed amendment to § 703.13 is to clarify that an agreed upon procedures engagement, as defined by the American Institute of Certified Public Accountants, fulfills the audit requirement. This amendment is proposed pursuant to and in satisfaction of the provisions Texas Health and Safety Code, Chapter 102, and other relevant statutes.

#### FISCAL NOTE

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to costs or revenues for state or

local government as a result of enforcing or administering the rules.

#### PUBLIC BENEFIT AND COSTS

Ms. Doyle has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of policies and procedures the Institute will follow to implement its statutory duties. Probable economic cost to persons required to comply with the rule will be for the institutions of higher education expending \$500,000 or more in state grants to avoid incurring costs for a single audit.

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

Ms. Doyle has determined that the rule shall not have an effect on small businesses or on micro businesses.

Written comments on the rules may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than November 2, 2014. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to [kdoyle@cpr.it.state.tx.us](mailto:kdoyle@cpr.it.state.tx.us). Comments may be submitted by facsimile transmission to (512) 475-2563.

#### STATUTORY AUTHORITY

The rules are proposed under the authority of the Texas Health and Safety Code Annotated, §102.8, which provides the Institute with broad rule-making authority to administer the chapter. Kristen Pauling Doyle, the Institute's General Counsel, has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code that is affected by these rules.

#### §703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants.

(a) Prior to the disbursement of Grant Award funds, the Grant Recipient of a Cancer Research Grant Award shall demonstrate that the Grant Recipient has an amount of Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. The Grant Recipient's written certification of Matching Funds, as described in this section, shall be included in the Grant Contract. A Grant Recipient of a multiyear Grant Award may certify Matching Funds on a year-by-year basis for the amount of Award Funds to be distributed for the Project Year based upon the Approved Budget. A Grant Recipient receiving multiple Grant Awards may provide certification at the institutional level.

(b) For purposes of the certification required by subsection (a) of this section, a Grant Recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, may credit toward the Grant Recipient's Matching Funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code, subject to the following requirements:

(1) The Grant Recipient shall file certification with the Institute documenting the federal indirect cost rate authorized for research grants awarded to the Grant Recipient; [and]

(2) To the extent that the Grant Recipient's Matching Funds credit does not equal or exceed one-half of the Grant Award funds to be distributed for the Project Year, then the Grant Recipient's Matching Funds certification shall demonstrate that a combination of the dollar amount equivalent credit and the funds to be dedicated to the Grant Award project as described in subsection (c) of this section is available and sufficient to meet or exceed the Matching Fund requirement; and [-]

(3) Calculation of the portion of federal indirect cost rate credit associated with subcontracted work performed for the Grant Recipient shall be in accordance with the Grant Recipient's established internal policy.

(c) For purposes of the certification required by subsection (a) of this section, Encumbered Funds may include:

(1) Federal funds, including, but not limited to American Recovery and Reinvestment Act of 2009 funds, and the fair market value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(2) State of Texas funds;

(3) funds of other states;

(4) Non-governmental funds, (including private funds, foundation grants, gifts and donations; and

(5) Unrecovered Indirect Costs not to exceed ten percent (10%) of the Grant Award amount, subject to the following conditions:

(A) These costs are not otherwise charged against the Grant Award as the five percent (5%) indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Grant Recipient must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; and

(C) The Grant Recipient is not a public or private institution of higher education as defined by §61.003 of the Texas Education Code.

(d) For purposes of the certification required by subsection (a) of this section, the following items do not qualify as Encumbered Funds:

(1) In-kind costs;

(2) Volunteer services furnished to the Grant Recipient;

(3) Noncash contributions;

(4) Income earned by the Grant Recipient that is not available at the time of Grant Award;

(5) Pre-existing real estate of the Grant Recipient including building, facilities and land;

(6) Deferred giving such as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(7) Other items as may be determined by the Oversight Committee.

(e) To the extent that a Grant Recipient of a multiyear Grant Award elects to certify Matching Funds on a yearly basis, the failure to provide certification of Encumbered Funds at the appropriate time for each Project Year shall serve as grounds for terminating the Grant Contract.

(f) In no event shall Grant Award funds for a Project Year be advanced or reimbursed, as may be appropriate for the Grant Award

and specified in the Grant Contract, until the certification required by subsection (a) of this section is filed and approved by the Institute.

(g) No later than 60 days from the anniversary of the Effective Date of the Grant Contract, the Grant Recipient shall file a form with the Institute reporting the amount of Matching Funds spent for the preceding Project Year.

(h) If the Grant Recipient failed to expend Matching Funds equal to one-half of the actual amount of Grant Award funds distributed to the Grant Recipient for the same period, the Institute shall:

(1) Carry forward and add to the Matching Fund requirement for the next Project Year the dollar amount equal to the deficiency between the actual amount of Grant Award funds distributed and the actual Matching Funds expended, so long as the deficiency is equal to or less than twenty percent (20%) of the total Matching Funds required for the same period and the Grant Recipient has not previously had a Matching Funds deficiency for the project;

(2) Suspend distributing Grant Award funds for the project to the Grant Recipient if the deficiency between the actual amount of Grant Funds distributed and the Matching Funds expended is greater than twenty percent (20%) but less than fifty percent (50%) of the total Matching Funds required for the period.

(A) The Grant Recipient will have no less than eight months from the anniversary of the Grant Contract's effective date to demonstrate that it has expended Encumbered Funds sufficient to fulfill the Matching Funds deficiency for the project.

(B) If the Grant Recipient fails to fulfill the Matching Funds deficiency within the specified period, then the Grant Contract shall be considered in default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract;

(3) Declare the Grant Contract in default if the deficiency between the actual amount of Grant Award funds distributed and the Matching Funds expended is greater than fifty percent (50%) of the total Matching Funds required for the period. The Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract; or

(4) Take appropriate action, including withholding reimbursement, requiring repayment of the deficiency, or terminating the Grant Contract if a deficiency exists between the actual amount of Grant Award funds distributed and the Matching Funds expended and it is the last year of the Grant Contract;

(i) Nothing herein shall preclude the Institute from taking action other than described in subsection (h) of this section based upon the specific reasons for the deficiency. To the extent that other action not described herein is taken by the Institute, such action shall be documented in writing, approved by the Chief Executive Officer, and included in Grant Contract records. The options described in subsection (h)(1) and (2) of this section may be used by the Grant Recipient only one time for the particular project. A second deficiency of any amount shall be considered an event of default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract.

(j) The Grant Recipient shall maintain adequate documentation supporting the source and use of the Matching Funds reported in the certification required by subsection (a) of this section. The Institute shall conduct an annual review of the documentation supporting the source and use of Matching Funds reported in the required certification for a risk-identified sample of Grant Recipients. Based upon the results of the sample, the Institute may elect to expand the review of

supporting documentation to other Grant Recipients. Nothing herein restricts the authority of the Institute to review supporting documentation for one or more Grant Recipients or to conduct a review of Matching Funds documentation more frequently.

§703.13. *Audits and Investigations.*

(a) Upon request and with reasonable notice, an entity receiving Grant Award funds directly under the Grant Contract or indirectly through a subcontract under the Grant Contract shall allow, or shall cause the entity that is maintaining such items to allow the Institute, or auditors or investigators working on behalf of the Institute, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, to review, inspect, audit, copy or abstract its records pertaining to the specific Grant Contract during the term of the Grant Contract and for the three year period following the end of the Grant Recipient's fiscal year during which the Grant Contract was terminated.

(b) Notwithstanding the foregoing, a Grant Recipient expending \$500,000 or more in state awards during its fiscal year shall obtain either an annual single independent audit, [or] a program specific independent audit, or an agreed upon procedures engagement as defined by the American Institute of Certified Public Accountants.

(1) A single audit is required if funds from more than one state program are spent by a [the] Grant Recipient that does not meet the definition of an institution of higher education in Texas Education Code, §61.003.

(2) The audited time period is the Grant Recipient's fiscal year.

(3) The audit must be submitted to the Institute within 30 days of receipt by the Grant Recipient but no later than 270 days following the close of the Grant Recipient's fiscal year and shall include a corrective action plan that addresses any weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit report and a summary of the action taken by the Grant Recipient to address the concerns, if any, raised by the audit report.

(A) The Grant Recipient may seek additional time to submit the required audit and corrective action plan by providing a written explanation for its failure to timely comply and providing an expected time for the submission.

(B) The Grant Recipient's request for additional time must be submitted on or before the due date of the required audit and corrective action plan. For purposes of this rule, the "due date of the required audit" is no later than the 270th day following the close of the Grant Recipient's fiscal year.

(C) Approval of the Grant Recipient's request for additional time is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(c) No reimbursements or advances of Grant Award funds shall be made to the Grant Recipient if the Grant Recipient is delinquent in filing the required audit and corrective action plan. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may receive reimbursements or advances of Grant Award funds during the pendency of the delinquency unless the Institute's approval declines to permit reimbursements or advances of Grant Award funds until the delinquency is addressed.

(d) A Grant Recipient that is delinquent in submitting to the Institute the audit and corrective action plan required by this section is not eligible to be awarded a new Grant Award or a continuation Grant Award until the required audit and corrective action plan are submitted. A Grant Recipient that has received approval from the Institute

for additional time to file the required audit and corrective action plan may remain eligible to be awarded a new Grant Award or a continuation Grant Award unless the Institute's approval declines to continue eligibility during the pendency of the delinquency.

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 September 22, 2014.

TRD-201404517

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 305-8422

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 17. STATE PENSION REVIEW BOARD**

**CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM**

**SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS**

**40 TAC §607.140, §607.142**

The State Pension Review Board (the "Board") proposes new 40 TAC Chapter 607, Subchapter D, concerning Compliance with the Minimum Training Requirements. The new subchapter will contain §607.140, concerning Public Retirement System Reporting; and §607.142, concerning Public Retirement System Records.

**BACKGROUND AND PURPOSE**

House Bill 13 (H.B. 13), enacted by the 83rd Legislature (2013), amended the Texas Government Code by adding §801.211. The new section directs the Board to develop and administer an educational training program for trustees and system administrators of Texas public retirement systems. The Board, among other things, is further directed to establish minimum training requirements, accredit other training programs, and track compliance with the minimum training requirements. To establish the minimum training and sponsor accreditation requirements, the Board adopted the first batch of rules contained under Chapter 607, Subchapters A through C, effective September 18, 2014. The second batch of rules relating to tracking compliance with the minimum training requirements is being proposed under Chapter 607, Subchapter D. The proposed rules under Subchapter D are necessary to comply with H.B. 13 and implement the provisions contained in §801.211. Additionally, the Board under §801.201(a) of the Government Code has the authority to adopt rules for the conduct of its business.

The purpose of these proposed rules is to establish reporting periods and recordkeeping requirements for Texas public retire-

ment systems and for the agency to track compliance with minimum training requirements, as mandated by §801.211 of the Government Code.

#### SECTION-BY-SECTION SUMMARY

New §607.140 establishes the requirements relating to the reporting of minimum educational training activities by public retirement systems.

New §607.142 establishes requirements relating to a public retirement system's retention of minimum educational training activity records.

#### FISCAL NOTE

John Perryman, Accountant/HR Director, has determined that for each year of the first five-year period the proposed rules would be in effect, there will be no fiscal implications to state or local governments or local economies.

#### MICRO-BUSINESSES AND SMALL BUSINESSES IMPACT ANALYSIS

Mr. Perryman also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed.

#### ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Mr. Perryman has further determined that there are no anticipated economic costs to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Perryman has determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the adoption of proposed rules relating to the minimum educational training program will be a clear and consistent implementation of §801.211 of Texas Government Code.

#### LOCAL EMPLOYMENT IMPACT STATEMENTS

The proposed rules will not affect a local economy; therefore, the Board has not prepared a local employment impact statement pursuant to Texas Government Code, §2001.022.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Christopher Hanson, Executive Director, State Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498 or by electronic mail to [prb@prb.state.tx.us](mailto:prb@prb.state.tx.us). Comments will be accepted until 5:00 p.m. on November 3, 2014, which is 31 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed new rules are authorized by the Texas Government Code, §801.201(a), which grants specific authority to the Board to adopt rules for the conduct of its business; and §801.211(e), which allows the Board to adopt rules to administer and provide educational training programs under §801.211.

#### CROSS REFERENCE

The proposed new rules affect the Texas Government Code Chapter 801.

§607.140. PRS Reporting.

(a) By February 1 and September 1 of each year, a PRS shall accurately report to the Board on behalf of its trustees and system administrator the MET credit hours completed, as required by Subchapter B. A PRS shall submit the reports on a form provided by the Board.

(b) In the February 1 report, a PRS shall submit the MET credit hours completed between September 1 of the previous year and January 31 of the current year and any previously un-reported training hours. In the September 1 report, a PRS shall submit the training hours completed between February 1 and August 31 of the current year and any previously un-reported training hours. The first report under this subsection shall be due on February 1, 2016 and shall include any training completed, as required by Subchapter B. A PRS shall be responsible for providing the following information to the Board on an ongoing basis. A PRS shall notify the Board of any changes in such information within 30 days after the date of the change. A PRS shall submit this information on a form provided by the Board.

(1) For each trustee: the name, occupation, date of assuming or re-assuming the trustee's position on the governing body, the term length, and the expected last date of service.

(2) For a system administrator: the name, business contact information, hiring date, and the last date of employment.

#### §607.142. PRS Records.

(a) For each trustee and system administrator, a PRS shall retain the following records for five years following the date an MET activity is completed:

(1) the sponsor's name and identification number, if applicable;

(2) the location of the MET activity;

(3) date(s) of completion; and

(4) the credit hours earned by the trustee or system administrator participant.

(b) The PRS, upon request of the Board, shall immediately submit a copy of any of the records retained in subsection (a) of this section for review.

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 September 19, 2014.

TRD-201404478

Christopher Hanson

Executive Director

State Pension Review Board

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-1736

## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 23. TRAVEL INFORMATION

The Texas Department of Transportation (department) proposes the repeal of §23.1 and §23.2, General Provisions, §23.10 and

§§23.12 - 23.14, Travel Information, §23.28 and §23.29, Texas Highways Magazine, §§23.51 - 23.59, Promotional Product Program, and §§23.101 - 23.105, Merchandising Program; and simultaneously proposing new §23.1 and §23.2, General Provisions, §§23.11 - 23.20, Travel Information, §§23.41 - 23.50, Travel Information Centers, §§23.61 - 23.73, Promotional Product Program, and §§23.81 - 23.85, Subscriber and Purchaser Information, all relating to travel information.

#### EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

The department is in the process of modernizing and streamlining Travel Information Division (division) program operations and services to reflect recent changes in federal and state law and to more accurately reflect modern processes and mediums used by the department to provide travel information and corresponding services to the traveling public. As part of the process, the department has determined that changes to the existing rules are necessary. Also, as part of a continuous effort by the department to make department rules more accessible and coherent to the public, the department is revising Texas Administrative Code, Title 43, Chapter 23, Travel Information to revise the organizational structure, headings, and language of the chapter to conform to the department's modern rule organizational structure. The new organizational structure subdivides the current rules into smaller sections and reorganizes them. The revision permits easier location of and access to specific provisions and makes the rules more understandable. To streamline this process the department is repealing all of the current rules relating to travel information operations in the chapter, and simultaneously adding new sections covering those operations. A substantial majority of the new rules are non-substantive, format revisions of the current rules.

The substantive additions in the new rules are necessary to address changes in federal and state law pertaining to the allowance of certain commercial activities at rest area facilities. Public Law 112-141, the Moving Ahead for Progress in the 21st Century Act (MAP-21), amended federal law to allow commercial advertising and media displays to be exhibited within facilities constructed at rest areas, such as travel information centers. In response, the 83rd Texas Legislature (2013) amended Transportation Code, §204.003 to allow the department to sell commercial advertising space at travel information centers.

The substantive additions to the rules allow for the sale of advertising space at travel information centers in compliance with federal and state law. The new rules set out the department's policies and procedures for the sale of advertising space at travel information centers. In addition, the new rules harmonize the rules for the sales of advertising in department travel information with the rules for the sale of advertising space at travel information centers. This will allow the department to integrate both operations for the sale of advertising space, in an attempt to achieve savings and greater advertising revenue. The changes in the rules also will provide a single, consistent framework across all advertising programs in the division, allowing a person or entity seeking to purchase advertising space from the department to do so more easily.

New §23.1, Purpose and Scope, contains the purpose and scope of the chapter and is primarily the same language as current §23.1 with two substantive changes. First, the new section adds language stating that operation of the Promotional Products Program (program) is a function of the division. This

addition is desirable because the program was added to the chapter in 2013 and while the program has been a function of the division since the program's creation, the rules do not currently reference the program in the chapter's purpose. Second, the new section removes a sentence which incorrectly states that the division directly serves the Texas Transportation Commission (commission). The division directly serves the Executive Director of the department.

New §23.2, Definitions, incorporates the following definitions from current §23.2 without change: "commission," "department," "director," and "division."

The new section incorporates and modifies the definition of "travel information center" from current §23.2 to more closely mirror the federal definition and create consistency with federal regulations. The new section incorporates and nominally modifies the definition of "travel information" from the term and definition of "travel literature" in current §23.2. This change more clearly defines the term and includes modern forms of media used by the department to deliver travel information to the traveling public.

The definitions for "purchaser" and "subscriber" are moved from current §23.2 to new §23.82 (relating to Subchapter E, Subscriber and Purchaser Information).

The new section removes the definitions for "display case," "magazine," "metropolitan area," "promotional graphics, photographs and icons," "promotional posters," "purchaser and subscriber mailing list," "region," and "travel and tourism" because they are not used in the revision, and therefore are unnecessary.

The new section also adds definitions for "person" and "promotional product."

New §23.11, Purpose, revises and combines current §23.10(a) and (e)(1). The new section contains the purpose and scope of new Subchapter B (relating to Travel Information). It deletes unnecessary language from the combination of the subsections and simplifies the language. The new section is substantively the same as the revised provisions with a correction of the cite to the statutory authority for the subchapter.

New §23.12, Contracts for Travel Information, revises current §23.10(d) and deletes unnecessary terms that are covered by one statement in the new section. It provides that the department may enter into contracts for certain travel information production and services to attain more economical performance of those services than the department could achieve. The new section is substantively the same as the current provisions except that it substitutes "persons" for "commercial entities" to clarify that any legal entity may contract with the department under this section in accordance with Transportation Code, §204.008.

New §23.13, Travel Information, revises current §23.10(b). New subsection (a) revises current §23.10(b)(1) - (2) which limits subject matter for inclusion in travel information by referring to Transportation Code, §204.001, rather than listing the subjects. This revision allows the division more discretion within the statutory limits to select subject matter for travel information and the ability to be more dynamic in meeting the needs of the traveling public.

New subsection (b) substantively restates current §23.10(b)(3) with minor revisions and clarifies that the director, rather than the department, may consider the information for inclusion. It provides that the Travel Information Division Director or the di-



rector's designee (director) may consider materials submitted by a third party for inclusion in travel information.

New subsection (c) revises current §23.10(b)(4) and creates a less formal process for the director to remove information submitted by non-department personnel from travel information on receipt of a complaint of inaccurate information or inadequate services related to the information. This revision permits a more flexible process for the division and the interested parties to attempt to cure complaints, while still requiring written notice of the complaints and written notice of removal to the person who submitted the information to the division.

New §23.14, Texas Official Travel Map, is substantially the same as current §23.12 with grammatical and formatting changes to conform to the new rule organizational structure. It provides guidelines and requirements for what will be included in the official travel map of the state.

New §23.15, Acceptable Advertising Subject Matter, combines current §23.10(e)(2) and §23.29(b). The new section is substantially the same with grammatical and formatting changes to conform to the new rule organizational structure. It lists the subject matter that is acceptable in department travel information. The new rules include the *Texas Highways* magazine in the definition of travel information for purposes of acceptable advertising to reduce unnecessary repetition throughout this subchapter. The new section also adds language to clarify that advertising subject matter is subject to the limitations of Transportation Code, §204.001 to ensure the rules do not conflict with current law.

New §23.16, Unacceptable Advertising Subject Matter and Restrictions, combines, revises, and reformats current §23.10(e)(3) and (5)(A) - (B), and §23.29(c) and (e)(1) - (2). It provides for restrictions and subject matter limitations for advertising in department travel information. The new section is substantially the same as the current provisions, except that new subsection (c) allows the advertisement of all registered Texas Department of Agriculture's GO TEXAN products that are grown, produced, or manufactured in Texas, or the facility or facilities where the registered Texas Department of Agriculture's GO TEXAN products are grown, produced, or manufactured in Texas. The current rule excepts only Texas wineries, and the department considers it appropriate to broaden the exception to a broader range of advertisers and allow all GO TEXAN products and related facilities to advertise with the department if they desire.

New §23.17, Advertising Notices, revises and combines current §23.10(e)(4)(A) and (D)(ii) and (iv) and §23.29(d)(1) and (4)(B) and (D). It provides that an interested person can request to receive advertising information via electronic mail (e-mail) by registering through the department's website. The new section also states the department may provide information to those on the e-mail list at any time, and that at least annually the department will publish a notice in the *Texas Register* with instructions on how to be placed on the e-mail list. The section also provides a process for a person to receive the advertising information without having to be on the e-mail list.

The new section also allows the department to streamline and modernize the dissemination of advertising information to interested persons by using e-mail and the department's website. It allows persons to register and receive advertising information year round, rather than the intermittent publication of information in the *Texas Register* and the physical mailing of advertising notices and rate cards. These changes will save the department

administrative costs and allow easier access for persons interested in advertising in department travel information year round.

New §23.18, Advertising Rates and Sales, revises and combines current §23.10(e)(4)(B), (C), and (D)(i) and (iii) and §23.29(d)(2), (3), and (4)(A) and (C). It provides that the department will calculate rates for each travel publication that is deemed appropriate for advertising, and will publish the information year round on the department's website. The new section also states that the department will accept orders for paid advertising that meet all the applicable requirements and are received before the publication deadline, in the order in which the orders are received, until all advertising space for the publication is filled. The new section allows the department to streamline and modernize the dissemination of advertising information to interested persons by using e-mail and the department's website. The new section allows persons to register and receive advertising information year round, rather than the intermittent publication of information in the *Texas Register* and the physical mailing of advertising notices and rate cards. These changes will save the department administrative costs and allow easier access for persons interested in advertising in department travel information year round.

New §23.19, Removal of Advertising, revises and combines current §23.10(e)(5)(C) and §23.29(e)(3). It provides that the department may remove an advertisement from travel information based on a third party complaint. The section requires written notice with the stated reasons for removal if the department acts to remove an advertisement. The new section removes some of the strict formalities and time frames of the complaint and removal process that are in the current rules. This language allows both the department and a third party advertiser greater flexibility to resolve complaints without out the necessity of removal of an advertisement.

New §23.20, Distribution, is substantially the same as current §23.10(c) with grammatical and formatting changes to conform to the new rule organizational structure. It provides the various policies and procedures for distribution of travel information, either free of charge or for reimbursement of production cost to the department, as they apply to different individuals and entities. To comply with Transportation Code, §204.002, the section also provides that an individual who request a single copy of a travel information publication will be provided one copy free of charge. The new section exempts the *Texas Highways* magazine from the section because the distribution of *Texas Highways* magazine, unlike other travel information, is subject to Transportation Code, §204.010, which requires the department to set subscription rates and other charges for the magazine at a level that generates receipts approximately sufficient to cover the cost of producing and distributing the magazine.

New §23.41, Purpose, contains the purpose and scope of new Subchapter C (relating to Travel Information Centers) and revises current §23.14(a) with the addition of language stating that the sale of commercial advertising space at travel information centers is now part of the operations of travel information centers. Senate Bill 1017, 83rd Legislature, Regular Session, 2013, amended Transportation Code, §204.003, allowing for the sale of advertising space at travel information centers to generate additional revenue for the department, if the department chooses to do so. The statutory amendment was the result of a change to federal law as enacted by MAP-21, which now allows limited commercial operations at facilities located at rest areas, including limited commercial advertising at travel information centers.

New §23.42, Display of Non-Department Produced Travel Information, revises current §23.14(c) - (f) and eliminates unnecessary language, but remains substantially the same in substance. It provides that the department may display travel information provided by non-department personnel at travel information centers. The new section states the subject matter limitations, the process for requesting the display of travel information, and the policies the department will use to display and dispose travel information provided by third parties. The new section clarifies that travel information submitted is subject to the limitations provided by Transportation Code, §204.001 rather than listing the subjects. This revision allows the division more discretion within the statutory limits to select travel information submitted to the department and permits the department to be more dynamic in meeting the needs of the traveling public. The new section subdivides the current section into smaller sections and reorganizes them so that the public may more clearly understand the process and policies for having third party travel information displayed at travel information centers.

New §23.43, Advertising at Travel Information Centers, provides that the department may sell commercial advertising space at travel information centers. Advertising at a travel information center may not exceed 60 percent of available display space in the facility, and must be exhibited solely within the facility. This language is necessary to comply with 23 U.S.C. §111, and 23 C.F.R. §752.8. The new section also states what subject matter is acceptable for advertising at a travel information center and specifies subject matter that is unacceptable for advertising at a travel information center. This language is necessary to comply with Transportation Code §204.001. The new language concerning advertising subject matter in subsections (c) - (e) essentially mirrors the language of new §23.15 and §23.16. This standardizes all rules related to the sale of advertising for the division and allows the department to integrate operations of advertising sales to achieve savings and attempt to increase advertising revenue. The standardization also provides a consistent framework across all division advertising programs so that advertisers may more easily purchase advertising space from the department. The new section also recognizes that the department may contract with a vendor for the sale of advertisements at a travel information center as authorized under new §23.46 (relating to Vendor for Advertising Operations).

New §23.44, Agreement for Advertising at Travel Information Centers, provides that an advertiser must enter into an agreement of a term of not more than two years with the department or its agent before an advertisement may be placed at a travel information center. The agreements must include language concerning: (1) compliance with all applicable laws; (2) the amount of charges for the advertising space; and (3) locations of advertisements. These requirements are consistent with other similar department programs and the requirements allow the department to more effectively protect the department and monitor contracts. The section also requires a termination clause in an agreement to protect the department from actions that would cause the department to lose federal funds. This language is necessary to comply with Transportation Code, §204.003.

New §23.45, Removal of Advertisement at Travel Information Centers, provides that the director or the department's vendor may remove an advertisement from a travel information center based on a third party complaint, a department determination that an advertisement is misleading or contains a misrepresentation of fact, or that it discriminates against any state or federally protected class of persons. The section requires written

notice with the stated reason for removal if the department acts to remove an advertisement. This language allows both the department and a third party advertiser greater flexibility to resolve complaints without the necessity of removal of the advertisement. The language contained in subsection (b) closely mirrors new §23.19 (relating to Removal of Advertising) to create consistency and integration of all policies of the division relating to advertising.

New §23.46, Vendor for Advertising Operations, states the department may contract with a vendor to administer the operations of advertising at travel information centers. This allowance is consistent with other similar department programs and is authorized under Transportation Code, §204.003. The section also provides that a vendor operating advertising operations at a travel information center must submit quarterly and annual reports to the department concerning: (1) a list of all participating advertisers that have agreements with the vendor for advertising at department travel information centers; (2) data of sales, rates and unused space; (3) revenues collected by the vendor and submitted to the department from the sales of advertising space at department travel information centers; and (4) any other information associated with the contract that the department determines necessary. These requirements are consistent with other similar department programs and allow the department to more effectively protect the department, monitor contracts, and make appropriate pricing decisions for advertising rates.

New §23.47, Advertising Sales and Solicitations, provides that an interested person can request to receive advertising information via e-mail by registering through the department's website. The new section also states the department may provide information to those on the e-mail list at any time, and that at least annually the department will publish a notice in the *Texas Register* with instructions on how to be placed on the e-mail list. The section provides a process for a person to receive the advertising information without having to be on the e-mail list. The section closely mirrors new §23.17 (relating to Advertising Notices) to create consistency and integration of all policies of the division relating to advertising and advertising sales. This will also allow the department to streamline the dissemination of advertising information to interested persons by utilizing e-mail and the department's websites. It allows a person to register and receive advertising information year round, rather than the intermittent publication of information in the *Texas Register* and the physical mailing of advertising notices and rate cards by the department. This will save the department administrative costs and allow easier access year round for advertisers interested in advertising in department travel information centers.

New §23.48, Advertising Rates and Sales, provides that the department will calculate rates for each travel information center that is considered appropriate for advertising, and will publish the information year round on the department's website. The published information will include advertising space and positions, advertising rates, and unique travel information center public visitor data. The new section states that the department will accept orders for paid advertising that meet all applicable requirements, in the order in which the orders are received, until all advertising space is filled, and will create a waiting list if necessary. The language in the new section closely mirrors new §23.18 (relating to Advertising Rates and Sales) to create consistency and integration of all policies of the division relating to advertising and advertising sales. This will also allow the department to streamline the dissemination of advertising information to interested persons by using e-mail and the department's websites.

It allows a person to register and receive advertising information year round, rather than the intermittent publication of information in the *Texas Register* and the physical mailing of advertising notices and rate cards by the department. This will save the department administrative costs and allow easier access year round for advertisers interested in advertising in department travel information centers.

New §23.49, Vending Machines, revises of current §23.14(g) and provides that the department may permit vending machines at a travel information center and that Texas Department of Assistive and Rehabilitative Services, Division for Blind Services, has first right of refusal to operate the vending machines. The new section is substantially the same as the current provision except that it removes language prohibiting charging for goods or services at a travel information center. Federal and state laws have been amended to allow for certain limited commercial activities at travel information centers, including the sale of certain items and advertising. This revision was necessary to accurately reflect changes in law to 23 U.S.C. §111 and Transportation Code, Chapter 204.

New §23.50, Non-department Use of Travel Information Centers, is essentially the same as the current §23.14(h) with grammatical and formatting changes to conform to the new rule organizational structure. It provides the process and requirements for a person to request use of a travel information center for non-department use, and the policies and rules that apply to that use.

New §23.61, Purpose, combines current §23.51 and §23.101 and contains the purpose and scope of new Subchapter D (relating to Promotional Products Program) as authorized by Transportation Code, §204.009. The program allows the department to sell promotional items approved by the commission that advertise the resources of the state to generate revenue for use in the department's travel and information operations. The new subchapter combines the current Promotional Products Program and Merchandise Program. After an unsuccessful request for proposal by the department in 2013 to secure vendors for the programs, the department has reassessed the current rules and has attempted to clarify and more precisely present the program as a single operation that includes all components of the two current programs. The department believes that the combining of the two programs will allow outside vendors, wholesalers, and retailers a more clear understanding of the rules and create broader participation, leading to revenue generation for the department.

New §23.62, Definitions, incorporates and combines the definitions from the current §23.52 and §23.102 and contains substantially identical definitions except "program" refers to the Promotional Products Program reflecting the combination of the current Merchandising Program and the Promotional Products Program.

New §23.63, Sale of Products by the Department, is substantially the same language as the current §23.53 and provides the locations where the sale of products under the program may occur and various sales and payment requirements. The new section adds language that allows the department to sell products under the program through department controlled or operated websites that promote department programs or campaigns. The current rule allows web based sales only through the *Texas Highways* magazine website. The department has various other websites, such as the *Don't Mess with Texas* website, that promote department programs and campaigns that the department believes can more strategically target customers for certain products un-

der the program. These additional points of sale will allow the department more flexibility in the operation of the program.

New §23.64, Refunds and Complaints, revises current §23.59 with minor grammatical and formatting changes to conform to the new rule organizational structure. It provides the process for a person to receive a refund for undamaged returned products and provides for a complaint process concerning products under the program.

New §23.65, Types of Promotional Products, is essentially the same language as the current §23.54 with minor grammatical and formatting changes to conform to the new rule organizational structure. It provides a requirement that products sold under the program must advertise resources of the state as required by Transportation Code, §204.009. The new section also provides the different product categories.

New §23.66, Request for Inclusion of Product in Program, revises current §23.55 with minor grammatical and formatting changes to conform to the new rule organizational structure. It provides the process and requirements for a wholesaler to request to have a product included in the program and provides that the director will make the final determination of those requests.

New §23.67, Market Research and Product Selection, is substantially the same as the current §23.56 with minor grammatical and formatting changes to conform to the new rule organizational structure. It states that the department may conduct market research for the program to assist with product selection, and may obtain bids from a wholesaler to produce products under the program. The new section also provides that the department will keep a list of wholesalers who express interest in providing products for the program and that the department will notify them of those opportunities as they arise.

New §23.68, Vendor Contract and Duties, revises and combines current §23.57(a) - (c) and part of (d) and §23.105(a). It provides the department may contract with a vendor to provide any of the following services for the program: (1) conducting market research; (2) soliciting products; (3) conducting initial product selection; and (4) managing product acquisitions, inventory, or sales. The new section states that a vendor must keep all records received from wholesalers regarding project selection, and that a vendor who manages product acquisitions or product sales for the program, must enter into the appropriate agreements required by the rules with wholesalers and retailers. The specific requirements of paragraphs (1) - (4) of current §23.57(d) are incorporated into new §23.69 (relating to Vendor Wholesale Report) so that the rules read more coherently and the specific requirements are more easily located.

New §23.69, Vendor Wholesale Report, is essentially the same as the current §23.57(d) with grammatical and formatting changes to conform to the new rule organizational structure. It provides that a vendor that contracts to manage product acquisitions for the department shall furnish to the department certain monthly and annual reports relating to wholesale information. The reports must include information relating to wholesalers participating in the program through the vendor, wholesalers who submitted products to the vendor for consideration, descriptions of products submitted and whether the product was selected or rejected, revenues submitted by the vendor to the department, and the amount of fees retained by the vendor.

New §23.70, Vendor Retail Report, is largely the same as the current §23.105(c) with grammatical and formatting changes to

conform to the new rule organizational structure. It provides that a vendor that contracts to manage product sales for the department shall furnish to the department certain monthly and annual reports relating to retail information. Those reports must include information relating to names and contact information of retailers participating in the program through the vendor, administrative and royalty fees owed to the vendor under the program and those collected by the vendor, revenue submitted to the department, and other contract details between the vendor and retailer.

New §23.71, Wholesaler Agreement, is substantially the same as the current §23.58 with grammatical and formatting changes to conform to the new rule organizational structure. It provides that a wholesaler whose product is selected must enter into an agreement with the department or the department's vendor that addresses types of products, pricing, distribution, termination of the contract and other contract as determined by the department before the product may be sold under the program.

New §23.72, Retailer Agreement, is substantially the same language as the current §23.105(a) - (b) with grammatical and formatting changes to conform to the new rule organizational structure. It provides that a retailer that sells products through the program must enter into an agreement of not less than two years with the department or its vendor before any product may be sold. The agreement must include terms concerning details about the products being sold, fees, pricing, and must require compliance with all state laws prohibiting discrimination based on any state or federally legally protected class of persons.

New §23.73, Use of Department Owned Intellectual Property, combines current §23.58(a)(8) and §23.103(c) and is essentially the same. The new section clarifies that any third party involved in the program that uses department owned trademarks must enter into an appropriate license agreement under Transportation Code, §201.205, as part of its contract.

New §23.81, Purpose, provides the purpose and scope of new Subchapter E (relating to Subscriber and Purchaser Information). Transportation Code, §204.011 requires the commission to adopt policies related to subscriber and purchaser information.

New §23.82, Definitions, incorporates the definition of "subscriber" from the current §23.2 without change and incorporates and modifies the definition of "purchaser" to include persons who purchase promotional products generally as defined, as opposed to only a purchaser of a *Texas Highways* magazine product. This clarification is necessary to reflect previously adopted changes in the rules expanding the promotional products program. This change also makes the terms easier to locate and language easier to understand because the terms are only used in that subchapter.

New §23.83, Department Use, is the same as current §23.28(a) with minor grammatical and formatting changes to conform to the new rule organizational structure. It provides that the department may use purchaser and subscriber information for purposes of marketing, surveying customers, and offsetting statewide travel operations costs.

New §23.84, Mailing List, is substantially the same as current §23.28(b)(1) and (3) with minor grammatical and formatting changes to conform to the new rule organizational structure. It provides that the department may sell a mailing list containing purchaser and subscriber information and also provides a process for a purchaser or subscriber to have their information removed from a mailing list sold by the department.

New §23.85, Governmental Agency, is the same as current §23.28(c) with minor grammatical and formatting changes to conform to the new rule organizational structure. It provides that subscriber and purchaser information may be disclosed to certain governmental entities on a limited basis.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the repeal and new sections as proposed are in effect, specifically referring to the new sections allowing advertising at travel information centers, there will be fiscal implications for state or local governments as a result of enforcing or administering the repeal and new sections. There will be minimal revenue and fiscal impact in Fiscal Year (FY) 2015 as the program may not be implemented until near the end of the year. Furthermore, until the program is fully functional, future revenues are expected to remain minimal. The department estimates a positive fiscal impact of \$20,000 in FY 2015, \$25,000 in FY 2016, \$30,000 in FY 2017, \$35,000 in FY 2018, and \$35,000 in FY 2019. However, once the program is fully operational for an entire fiscal year, the department will be able to collect more data and develop a more accurate revenue forecast.

Margo Richards, Director, Travel Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Ms. Richards has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to provide clarity and efficiency in the operations and administration of the department's travel division operations and programs. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of §23.1 and §23.2, General Provisions, §§23.10 and 23.12 - 23.14, Travel Information, §23.28 and §23.29, Texas Highways Magazine, §§23.51 - 23.59, Promotional Product Program, and §§23.101 - 23.105, Merchandising Program; and the proposed addition of new §23.1 and §23.2, General Provisions, §§23.11 - 23.20, Travel Information, §§23.41 - 23.50, Travel Information Centers, §§23.61 - 23.73, Promotional Product Program, and §§23.81 - 23.85, Subscriber and Purchaser Information, all relating to travel information may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Travel Information Division Rules." The deadline for receipt of comments is 5:00 p.m. on November 3, 2014. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 43 TAC §23.1, §23.2

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

§23.1. *Purpose.*

§23.2. *Definitions.*

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 September 22, 2014.

TRD-201404496

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



### SUBCHAPTER B. TRAVEL INFORMATION

#### 43 TAC §§23.10, 23.12 - 23.14

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

§23.10. *Travel Literature.*

§23.12. *Texas Official Travel Map.*

§23.13. *Links to Community Web Sites from Rest Areas and Travel Information Centers.*

§23.14. *Display of Travel Literature in the Texas Travel Information Centers.*

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 September 22, 2014.

TRD-201404497

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



### SUBCHAPTER C. TEXAS HIGHWAYS MAGAZINE

#### 43 TAC §23.28, §23.29

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

§23.28. *Distribution of Subscriber and Purchaser Information.*

§23.29. *Magazine Advertising.*

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 September 22, 2014.

TRD-201404498

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



### SUBCHAPTER D. PROMOTIONAL PRODUCT PROGRAM

### 43 TAC §§23.51 - 23.59

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

§23.51. *Purpose.*

§23.52. *Definitions.*

§23.53. *Sale of Products by the Department.*

§23.54. *Types of Promotional Products.*

§23.55. *Request for Inclusion of Product in Program.*

§23.56. *Market Research and Product Selection.*

§23.57. *Contract with a Vendor.*

§23.58. *Wholesaler Contract.*

§23.59. *Refunds and Complaints.*

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 September 22, 2014.

TRD-201404499

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



### SUBCHAPTER E. MERCHANDISING PROGRAM

#### 43 TAC §§23.101 - 23.105

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish

rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

§23.101. *Purpose.*

§23.102. *Definitions.*

§23.103. *Merchandising Program.*

§23.104. *Product and Retailer Selection.*

§23.105. *Vendor and Retailer Agreement.*

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 September 22, 2014.

TRD-201404500

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



### SUBCHAPTER A. GENERAL PROVISIONS

#### 43 TAC §23.1, §23.2

#### STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

§23.1. *Purpose and Scope.*

This chapter prescribes the policies and procedures for operation of the Travel Information Division of the Texas Department of Transportation. The travel and tourism functions of the division, as authorized by Transportation Code, Chapter 204, include operation of the state's network of travel information centers, production and dissemination of the state's travel and tourism information including, publication of *Texas Highways* magazine, the state's official travel magazine, and operation of the department's promotional products program.

§23.2. *Definitions.*

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Director--The director of the Travel Information Division.

(4) Division--The Travel Information Division of the Texas Department of Transportation.

(5) Person--An individual, partnership, corporation, or other business entity.

(6) Promotional product--An item sold through the promotional products program under Subchapter D of this chapter (relating to Promotional Product Program) and described by §23.65 of this chapter (relating to Types of Promotional Products).

(7) Travel information--Maps, pamphlets, brochures, other printed materials, public service announcements, public service programs, advertisements, webpages, and electronic media, that are designed to inform the public, stimulate travel to and within Texas, and publicize points of interest, recreational grounds, scenic places, historical facts, highway and road conditions, emergency travel information or other items of interest and value to the traveling public.

(8) Travel information center--A location selected by the department at which travel information and travel counseling are provided.

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 September 22, 2014.

TRD-201404501

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



## SUBCHAPTER B. TRAVEL INFORMATION

### 43 TAC §§23.11 - 23.20

#### STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

#### §23.11. Purpose.

Transportation Code, Chapter 204, authorizes the department to create and publish travel information for distribution to the traveling public and to include paid advertising in travel information if the quality and quantity of the travel information is maintained. This subchapter prescribes the department's policies and procedures relating to the de-

velopment, production, printing, marketing, and distribution of travel information by or for the department.

#### §23.12. Contracts for Travel Information.

The department, consistent with Government Code, Chapters 2155 - 2158 and 2252, and Texas Constitution, Article XVI, Section 21, may enter into contracts with one or more persons for production, marketing, or distribution of travel information to achieve more effective or economical production, marketing, or distribution of travel information than could be attained by departmental efforts alone.

#### §23.13. Travel Information Content.

(a) Subject matter. The director or the director's designee may select subject matter for inclusion in department travel information, subject to the limitations provided in Transportation Code, §204.001.

(b) Information submitted by non-department personnel. The director or the director's designee may consider for inclusion in department travel information, information that is submitted by a person who is not a part of the department.

(c) Removal of information. The director may remove information submitted under subsection (b) of this section if the department receives a consumer complaint concerning inaccurate information or inadequate services related to the information. The department will send a written notice of the complaints to the person that submitted the information. If the department determines the complaints are valid, the director or director's designee, on written notice to the person that submitted the information stating the reason for removal, may remove the information from all department travel information.

#### §23.14. Texas Official Travel Map.

(a) As authorized by Transportation Code, Chapter 204, the department will publish the Texas Official Travel Map for the general traveling public. The map will show cities, towns, and highways, as described in this section, the mileage between selected points, and the locations of Texas state parks, national forests, national parks and wildlife refuges, safety rest areas, travel information centers, major lakes and rivers, counties, and other geographic information selected by the department.

(b) The map may include a city or town with a population of 50 or more that is:

(1) located on the state-maintained highway system; or

(2) near a significant park or recreational area, or a historical, recreational, or scenic facility that is of interest to tourists and regularly open to the public.

(c) The map will include highways that are designated by the commission and regularly open to public traffic including:

(1) interstate highways;

(2) United States highways;

(3) state highways;

(4) farm-to-market, ranch-to-market, or recreational roads that connect with one or more higher-grade highways or roadways; and

(5) farm-to-market, ranch-to-market, or recreational roads, spurs, loops, business routes, or park roads that provide access to widely recognized parks, lakes, tourism attractions, or recreational areas.

(d) The map may include map insets that show a few primary highways or through routes in selected cities or areas of the state. The department will select a city or area for an inset in a manner to best use

the limited space available on the map and on the basis of annual traffic volume in each of the metropolitan areas or on the basis of the city or area being a port of entry.

(e) The map may include a chart that shows the mileage between selected cities and towns. In selecting a city or town for the chart, the department will consider:

(1) the significance of its location as a geographic reference point for calculating long-distance trips within Texas, assuring a statewide balance in the selections;

(2) the importance of its location as a gateway or entrance point to the state or as the site of significant highway intersections;

(3) whether it is a primary travel or tourist destination; and

(4) its population.

§23.15. Acceptable Advertising Subject Matter.

Subject to the limitations provided in Transportation Code, §204.001, subjects acceptable for advertising in department travel information are:

(1) Texas vacation, travel, and tourism-related attractions, sites, facilities, destinations, accommodations, restaurants, events, equipment and services;

(2) shopping opportunities related to Texas destinations and products, including food products;

(3) pleasure-driving, including equipment, facilities, destinations, and services;

(4) recreational attractions, sites, equipment, facilities, and services;

(5) outdoor activities and attractions, including camping, hiking, fishing, boating, bicycling, gardening, photography, birding and other wildlife viewing, and astronomical and geological attractions;

(6) public transportation modes, products, facilities, and services;

(7) financial, media, and higher education services related to Texas institutions;

(8) real estate developments related to recreational and retirement living in Texas; and

(9) other matters of interest and value to the public and highway users.

§23.16. Unacceptable Advertising Subject Matter and Restrictions.

(a) Unacceptable subjects. The following are unacceptable for an advertisement in department travel information:

(1) an out-of-state travel-tourism location, destination, facility, or service, unless it borders and has ties with Texas or augments Texas travel or tourism;

(2) an alcoholic beverage, except as provided by subsection (c) of this section;

(3) a tobacco product;

(4) a sexually-oriented product or service; and

(5) any subject that is not related to travel and tourism, as determined by the department.

(b) Other restrictions. The department will not accept an advertisement that:

(1) it considers to be misleading or a misrepresentation of facts; or

(2) discriminates against a state or federally protected class of persons.

(c) Exception. This section does not prohibit the advertisement of a product, or a facility open to the general public, that highlights a registered Texas Department of Agriculture's GO TEXAN product that is grown, produced, or manufactured in Texas.

§23.17. Advertising Notices.

(a) Electronic mailing list. A person interested in advertising in department travel information may request, by registering on the department's website, to receive advertising information from the department electronically. The department or its designated agent may provide advertising space deadlines and rates to persons on the electronic mailing list. Annually, the department will publish in the *Texas Register* a notice with instructions for requesting to be included in the department's electronic mailing list to receive advertising information. A person may request to be removed from the electronic mailing list at any time.

(b) Printed information. On request, the department or its designated agent will provide a copy of the advertising information.

§23.18. Advertising Rates and Sales.

(a) Advertising rates. The department will calculate advertising rates for each travel information publication that the department considers appropriate for advertising. The department will publish the advertising rate information on a continuous basis on the department's website and at least annually in the *Texas Register*. The published information will include information about:

(1) advertising space and positions;

(2) advertising rates;

(3) publication issue and closing dates;

(4) circulation data;

(5) publisher's editorial profile; and

(6) other related information.

(b) Advertising sales. The department or its designated agent will accept orders for paid advertising that meet the requirements of this subchapter and are received before the publication deadline, in the order in which the orders are received, until all advertising space for the publication is filled.

§23.19. Removal of Advertising.

The director or director's designee may remove an advertisement based on the department receiving a complaint concerning the advertised product or service. The department will send a written notice of the complaints to the advertiser. If the department determines the complaints are valid, the director or director's designee, on written notice to the advertiser stating the reasons for removal, may remove the advertisement from all travel information.

§23.20. Distribution.

(a) Purpose. This section prescribes the policies and procedures of the department relating to the distribution of travel information, except that it does not apply to the distribution of the *Texas Highways Magazine*. The procedures provide for equitable free distribution of available travel information within budgetary constraints and maximize the resources of the department available to advertise the highways of the state and to promote travel to and within the state.

(b) Single copies. A single copy of a publication will be distributed free of charge to each individual requesting the publication.



(c) Multiple copies free of charge.

(1) Subject to inventory and budgetary constraints, the department:

(A) will distribute multiple copies of travel information free of charge to:

(i) each elected state or federal official, for use in the official's duties; and

(ii) the Economic Development and Tourism Office of the Governor, a state or federal agency, and a local governmental entity involved in tourism; and

(B) may distribute multiple copies of travel information free of charge to a person that submits, on a form prescribed by the department, a written request in which the person:

(i) describes how the copies will assist the traveling public and stimulate travel to or within the state; and

(ii) certifies that all copies of the travel information will be redistributed to the public free of charge.

(2) If a request submitted under paragraph (1) of this subsection is denied, the department will provide to the requestor a written notice of the reasons for the denial.

(d) Multiple copies for a charge. Subject to inventory and budgetary constraints, the department may provide multiple copies of travel information to any person who:

(1) reimburses the department for all reasonable direct and indirect production costs for the copies; and

(2) certifies in a written form prescribed by the department that all copies of the travel information will be redistributed to the public free of charge.

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 September 22, 2014.

TRD-201404502

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



## SUBCHAPTER C. TRAVEL INFORMATION CENTERS

### 43 TAC §§23.41 - 23.50

#### STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the

release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

#### §23.41. Purpose.

The department is required by Transportation Code, Chapter 204, to maintain and operate a statewide system of travel information centers. This subchapter prescribes department policies and procedures for:

(1) providing at travel information centers highway information, travel guidance, and travel information designed to assist the traveling public and stimulate travel to and within this state; and

(2) selling commercial advertising space at a travel information centers.

#### §23.42. Display of Non-Department Produced Travel Information.

(a) Travel information. The department may accept, display, and distribute to the traveling public at the department's travel information centers travel information that promotes Texas travel and tourism opportunities and is provided by a third party.

(b) Eligibility for display. To be displayed at a travel information center under this section, travel information must be:

(1) the type of information described by Transportation Code, §204.001;

(2) provided to the department free of charge; and

(3) approved for display by the director or the director's designee.

(c) Unacceptable information. The department will not accept information that:

(1) is solely for the purpose of selling a membership or promoting something that is not directly related to travel or tourism;

(2) promotes an out-of-state travel and tourism activity, destination, facility, attraction, or service that does not directly augment Texas travel or tourism;

(3) contains terminology, advertising, or pictures that are sexually-oriented;

(4) is intended to be displayed on a wall at a travel information center; or

(5) discriminates against a state or federally protected class of persons.

(d) Request for display. A person may submit a request for the display of travel information under this section. The department will review requests in the order in which the requests are received. If the travel information is seasonal or if no space for display is available, the travel information will be placed on a waiting list for display.

(e) Agreement. Before a person may display travel information under this section, the person must enter into a written agreement with the department for the display of that information.

(f) Manner of display. Travel information to which this section applies will be:

(1) displayed in a manner, as determined by the travel information center supervisor that:

(A) is the most efficient and informative for the public; and

(B) gives more exposure to destinations that are near the travel information center or in high demand;

(2) regularly rotated; and

(3) displayed in season, if it is of a seasonal nature.

(g) Disposal. Outdated travel information will not be returned to its provider and will be disposed of in the most appropriate manner, as determined by the travel information center supervisor, with priority given to recycling.

§23.43. Advertising at Travel Information Centers.

(a) Sale of space. In accordance with 23 U.S.C. §111, and Transportation Code, Chapter 204, the department may sell, or contract with a vendor to sell on the department's behalf, commercial advertising space at a travel information center in accordance with this section.

(b) Limitations. An advertisement may be exhibited only within a facility at the travel information center. The advertising area may not exceed 60 percent of all of the display area in the facility, with the remaining display area to be used free of charge for providing information to the traveling public and public service announcements.

(c) Acceptable subject matter. The subject of an advertisement in a travel information center is limited to:

(1) Texas vacation, travel or tourism-related attractions, sites, facilities, destinations, accommodations, restaurants, events, equipment or services determined by the department to be of cultural, educational, historical, or recreational interest to the public;

(2) shopping opportunities related to Texas destinations and products, including food products;

(3) pleasure-driving, including equipment, facilities, destinations, and services;

(4) recreational attractions, sites, equipment, facilities, and services;

(5) outdoor activities and attractions, including camping, hiking, fishing, boating, bicycling, gardening, photography, birding and other wildlife viewing, astronomical and geological attractions;

(6) public transportation facilities and services;

(7) financial, media, and higher education services related to Texas institutions;

(8) real estate developments related to recreational and retirement living in Texas; and

(9) other matters of interest and value to the public and highway users, as determined by the department.

(d) Unacceptable subject matter. An advertisement in a travel information center may not advertise:

(1) an out-of-state travel-tourism location, destination, facility, or service unless it borders and has ties with Texas or augments Texas travel or tourism;

(2) an alcoholic beverage, except as provide by subsection (e) of this section;

(3) a tobacco product;

(4) a sexually-oriented product or service; or

(5) another subject that is not related to travel or tourism.

(e) Exception. This section does not prohibit the advertisement of a product, or a facility open to the general public, that

highlights a registered Texas Department of Agriculture's GO TEXAN product that is grown, produced, or manufactured in Texas.

§23.44. Agreement for Advertising at Travel Information Centers.

Before an advertiser may place an advertisement at a travel information center, the advertiser must enter into an agreement with department or the department's vendor. The agreement must:

(1) require that the advertiser comply with state law, including laws prohibiting discrimination against any state or federally protected class of persons;

(2) include a termination clause protecting the department from allowing any activity that would decrease the amount of federal highway funding available to the department;

(3) provide the specific amount of charges for the advertising space;

(4) identify the location of each advertisement; and

(5) be for a term of not more than two years.

§23.45. Removal of Advertisement at Travel Information Centers.

(a) Grounds for removal. The director or director's designee, or the department's vendor, may remove an advertisement in the commercial advertising space at a travel information center if:

(1) the department or its vendor receives a complaint about the advertised product or service that the department or vendor determines to be valid;

(2) the department or its vendor considers the advertisement to be misleading or contain a misrepresentation of facts; or

(3) the advertisement discriminates against any state or federally protected class of persons.

(b) Removal. If the department or vendor determines that a complaint received under subsection (a)(1) of this section is valid, the department or its vendor will send a written notice of the complaint to the advertiser. If the department or vendor determines that the complaint is valid and that removal of the advertisement is appropriate, the director or director's designee, or the department's vendor, on written notice to the advertiser stating the reasons for removal, may remove the advertisement.

§23.46. Vendor for Advertising Operations.

(a) Contracts. The department may contract with one or more vendors for professional services to administer the advertising operations for the department at travel information centers.

(b) Quarterly reporting. A vendor shall furnish a quarterly electronic inventory to the department in a format prescribed by the department. The inventory must include:

(1) a list of all participating advertisers that have a valid agreement with the vendor under §23.44 of this subchapter (relating to Agreement for Advertising at Travel Information Centers); and

(2) data pertaining to sales, advertising rates, and unused advertising space at each travel information center.

(c) Annual report. A vendor shall furnish an annual report to the department in a format prescribed by the department. The annual report must include:

(1) a listing of all advertisers with which the vendor has executed an agreement under §23.44 of this subchapter during the year for which the report is made;

(2) a financial accounting of all revenues collected during that year by the vendor from the sales of advertising space at each travel information center;

(3) the annual revenues submitted to the department from the sales of advertising space at each travel information center;

(4) data pertaining to sales, advertising rates, and unused advertising space at each travel information center; and

(5) any other information associated with the contract that the department determines necessary.

§23.47. Advertising Sales and Solicitations.

(a) Electronic mailing list. A person interested in advertising at a travel information center may request, by registering on the department's or its vendor's website, to receive department advertising information electronically. The information provided to persons on the electronic mailing list will include notices of available advertising space and rates. Annually, the department will publish in the *Texas Register* a notice with instructions for requesting to be included in the department's electronic mailing list to receive advertising information. A person may request to be removed from the electronic mailing at any time.

(b) Printed information. On request, the department or its vendor will provide a printed copy of the advertising information by mail.

§23.48. Advertising Rates and Sales.

(a) Advertising rates. The department will calculate advertising rates for each travel information center. The department or its vendor will publish the advertising rate information on a continuous basis on the department's or its vendor's website and at least annually in the *Texas Register*. The published information will include information about:

- (1) advertising space and positions;
- (2) advertising rates;
- (3) unique travel information center public visitor data; and
- (4) other related information.

(b) Procedure for selling advertising. The department or its vendor will accept all advertising orders in the order in which the orders are received until all advertising space is filled, and will create a waiting list if necessary.

§23.49. Vending Machines.

(a) In accordance with 23 C.F.R. Part 752, Human Resources Code, §94.002, and Government Code §2165.212, the department may permit vending machines in travel information centers for the purposes of dispensing food, drink, and other items that it determines appropriate and desirable.

(b) The Texas Department of Assistive and Rehabilitative Services, Division for Blind Services has first right of refusal to operate vending machines in travel information centers.

§23.50. Non-department use of Travel Information Centers.

(a) Request. A person may submit a request in writing to hold an event at a travel information center. Requests will be approved in the order in which the orders are received.

(b) Agreement. Before a person may hold an event at a travel information center, the person must enter into a written agreement with the department agreeing to abide by the requirements of this section.

(c) Activity. All events at a travel information center or its facilities shall be conducted in a manner that will cause the least interference with the travel information center's operations.

(d) Restrictions. Alcoholic beverages are prohibited in a travel information center or its facilities and on the premises of the center. Any item, including food or drink, that is offered at the travel information center as part of an event, must be given free of charge to all visitors at the travel information center.

(e) Signs. The person hosting the event at a travel information center:

(1) must receive prior approval of the director or the director's designee of each sign to be used for the event, including advance signs advising motorists of the event;

(2) may not attach a sign to the travel information center or a highway sign or place a sign so that it interferes with the travel information center's operation or the view from the roadway of a highway sign;

(3) shall prominently display a sign indicating that all items provided are free of charge to all visitors of the travel information center; and

(4) except for the sign required under paragraph (3) of this subsection, shall limit the signs used to only those necessary to identify the person hosting the event and to ownership signs that are permanently affixed to trailers, vehicles, tents, and other equipment that are directly used for holding the event.

(f) Services. The department will not furnish utilities unless the department expressly agrees to do so in the written agreement required for the event.

(g) Cleanup. The person hosting the event is solely responsible for the cleanup of all facilities used for the event.

(h) Compliance. The department will monitor compliance with the requirements of this section. The department may immediately cancel event activities on the failure to comply with those requirements. The department may use a person's non-compliance as the basis for refusing future requests.

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

TRD-201404503

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8863



## SUBCHAPTER D. PROMOTIONAL PRODUCT PROGRAM

### 43 TAC §§23.61 - 23.73

#### STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the

release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

#### §23.61. Purpose.

Transportation Code, §204.009, authorizes the department to sell promotional products such as calendars, books, prints, caps, clothing, or other items that advertise the resources of Texas. This subchapter prescribes policies and procedures relating to the department's promotional product program, including the selection, pricing, and sale of items.

#### §23.62. Definitions.

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

(1) Mark--A trademark, service mark, or copyright owned by the department, which may consist of a word, phrase, name, symbol, emblem, logo, or any combination of those items.

(2) Program--The promotional product program of the department.

(3) Retailer--A person that contracts with the department, department's vendor, or wholesaler to directly sell products under the program.

(4) Vendor--A person that acts as the authorized agent of the department in the marketing, administration, and the solicitation of participating wholesalers and retailers.

(5) Wholesaler--A person that offers a product to the department or its vendor to be sold through the program.

#### §23.63. Sale of Products by the Department.

(a) Place of sales. The department may sell products under this subchapter:

(1) at any department building, including a rest area building or travel information center;

(2) at a location at which the department has access to provide travel information, if such a sale is authorized under the access agreement;

(3) through the Texas Highways magazine and its website;  
and

(4) through a department controlled or operated website that is created for the purpose of promoting department programs or campaigns.

(b) Fees. Shipping and handling fees will be added to mail orders to offset the cost of distribution.

(c) Currency; taxes. All sales must be made in United States dollars and all applicable sales taxes will be added to the price of the products.

(d) Revenue. All revenue collected under the program will be deposited to the credit of the state highway fund for use in the department's travel information operations.

#### §23.64. Refunds and Complaints.

(a) Refunds. A refund of the purchase price of a product sold under the program, less shipping and handling costs, will be made on return of the product and the sales receipt or proof of purchase to the department or the department's vendor, as appropriate, but only if the

product is undamaged and unused and is returned with all tags and product packaging.

(b) Complaints. Complaints about merchandise may be directed to the director or the department's vendor and will be reviewed before the placement of future orders of the product. If the vendor receives a complaint, the vendor will provide to the department within 30 days after the date of receipt of the complaint a report that provides details of the complaint and all actions taken to resolve the complaint.

#### §23.65. Types of Promotional Products.

(a) Production or purchase. A product sold under the program may be designed and produced by the department or purchased from a wholesaler.

(b) Resources of the state. A product provided for sale under the program must advertise the resources of Texas the state and convey a positive image of the scenic, recreational, historical, geographical, cultural, or artistic aspects of the state or promote other department programs that advertise the resources of the state.

(c) Product categories. The following are approved product categories:

(1) printed material and paper products;

(2) clothing, jewelry, and accessories;

(3) audio-visual media items;

(4) travel related products;

(5) seasonal items;

(6) home décor;

(7) gardening and outdoor accessories;

(8) kitchen and food items;

(9) games;

(10) promotional items;

(11) tickets for events or attractions in the state; and

(12) travel related coupon booklets.

#### §23.66. Request for Inclusion of Product in Program.

(a) Request. A wholesaler, at any time, may request that a product be considered for sale under the program by sending to the director or the director's designee a sample of the product and a written request that includes:

(1) a description of the product, including its composition;

(2) location of the product's manufacturer;

(3) wholesale unit price of the product;

(4) suggested retail price of the product;

(5) selling history and performance of the product if it has been previously marketed;

(6) inventory production capabilities;

(7) method of delivery; and

(8) proof of ownership of the rights to market the product.

(b) Determination. The director or the director's designee will make the final determination on a request under subsection (a) of this section.

(c) Notification. The department will notify the wholesaler of the final determination. If the request is approved, the department will initiate a contract for the sale of the wholesaler's product.

(d) Samples. All samples submitted under this section become the property of the department unless the wholesaler specifies otherwise in the request and provides with the request a pre-paid return label and packaging or details for the wholesaler's personal pick-up of the sample.

§23.67. Market Research and Product Selection.

(a) Research. The department may conduct market research to determine which products are to be offered for sale under the program.

(b) Selection. After review of the research results, the department will select the products to be sold and begin a search for suppliers of those products.

(c) Bids. The department may obtain bids to produce selected products in accordance with Government Code, Chapters 2155 - 2158.

(d) Wholesaler list. The department will maintain a list of wholesalers who express an interest in supplying products. When the department determines that new products are needed, the department will notify those on the list.

§23.68. Vendor Contract and Duties.

(a) Vendor Services. The department may contract with a vendor to provide one or more of the following services for the program:

(1) conducting market research under §23.67 of this subchapter (relating to Market Research and Product Selection);

(2) soliciting products;

(3) conducting initial product selection; or

(4) managing product acquisitions, inventory, or sales.

(b) Product Selection. The final selection of a product for the program must be made by the department.

(c) Records. A vendor that contracts with the department under the program must maintain all records received from a wholesaler regardless of whether the wholesaler's product was selected for the program.

(d) Agreement with Wholesaler. A vendor that contracts to manage product acquisitions for the department shall enter into an agreement under §23.71 of this subchapter (relating to Wholesaler Agreement) with each wholesaler whose products are acquired by the vendor for the program.

(e) Agreement with Retailer. A vendor that contracts to manage product sales for the department shall enter into an agreement under §23.72 of this subchapter (relating to Retailer Agreement) with each retailer that sells products for the program through the vendor.

§23.69. Vendor Wholesale Report.

A vendor that contracts to manage product acquisitions shall furnish to the department, in a format prescribed by the department, monthly and annual wholesale reports. A report must include for the reporting period:

(1) a list of the names of all wholesalers participating in the program through the vendor;

(2) a list of the names of all wholesalers who submitted to the vendor products for consideration for the program and for each wholesaler a detailed description of each product submitted and whether the product was selected or rejected;

(3) revenue submitted by the vendor to the department, identifying the separate sources of revenue; and

(4) the total amount of fees retained by the vendor.

§23.70. Vendor Retail Report.

A vendor who is contracted to manage product sales for the department shall furnish to the department, in a format prescribed by the department, monthly and annual retail reports. A report must include for the reporting period:

(1) a list of the names of all retailers participating in the program through the vendor;

(2) contact information for each retailer participating in the program through the vendor, including address, key contact name, website, email, and phone numbers;

(3) the amount of administrative and royalty fees owed to the vendor under the program and those collected by the vendor;

(4) revenue submitted to the department for each retailer; and

(5) the date of expiration of the agreement for each participating retailer.

§23.71. Wholesaler Agreement.

(a) Agreement. A wholesaler whose product is selected must enter into an agreement with the department or the department's vendor, as appropriate, before the product may be sold under the program. The agreement must include:

(1) the description of the product;

(2) the quantity to be provided;

(3) payment terms;

(4) marketing and distribution terms, if applicable;

(5) the delivery schedule;

(6) the return policy;

(7) the agreement period with the termination date of the agreement; and

(8) any intellectual property rights related to the product and include or provide for any necessary licensing agreement.

(b) Pricing. The agreement must provide that the department will set the price of the product and may change the price of the product without notice to the wholesaler.

(c) Termination. The agreement must provide that the department may discontinue the acquisition or sale of a product at any time. A product must achieve an acceptable level of sales activity, as determined solely by the department, to be considered for continued participation in the program.

§23.72. Retailer Agreement.

(a) Agreement. A retailer that sells products through the program must enter into an agreement, in a form prescribed by the department, with the department or its vendor, before any product may be sold.

(b) Terms. Each agreement must:

(1) be for a term of not less than two years and provide the date that the agreement will terminate;

(2) require that the retailer comply with state laws prohibiting discrimination based on any state or federally legally protected class of persons;

(3) state the fees charged by the vendor to administer the program if a vendor is used; and

(4) provide detailed information about the specific products being sold.

§23.73. Use of Department Owned Intellectual Property.

(a) License agreement. A retailer, vendor, or wholesaler that produces or sells any promotional products under the program that use a department owned mark must enter into an appropriate license agreement with the department under Transportation Code, §201.205, as part of their contract.

(b) Goodwill. The retailer, vendor, or wholesaler shall cooperate with the department in building and maintaining the goodwill of the department and the goodwill associated with the department's marks.

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 September 22, 2014.

TRD-201404504

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



## SUBCHAPTER E. SUBSCRIBER AND PURCHASER INFORMATION

### 43 TAC §§23.81 - 23.85

#### STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §204.002, which provides the Commission with the authority to establish rules to require payment for large quantities of travel material, and §204.011, which provides the Commission with the authority to adopt rules to establish policies relating to the release, use, and sale of information related to subscribers of *Texas Highways* magazine or purchasers of promotional items.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 204.

§23.81. Purpose.

Transportation Code, §204.011, requires the commission to adopt policies relating the use, release, and sale of certain information collected by the department from subscribers to Texas Highway magazine and purchasers of promotional products. This subchapter prescribes those policies and related procedures.

§23.82. Definitions.

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

(1) Purchaser--A person who purchases a promotional product.

(2) Subscriber--A person who pays a fee to receive Texas Highways magazine.

§23.83. Department Use.

The department may use information from subscribers and purchasers to:

(1) survey readers and customers to determine reader satisfaction with the products purchased;

(2) obtain demographic profiles that will assist the division in choosing appropriate subject matter or learning about the reading and purchasing habits of subscribers and purchasers;

(3) market subscription and product offers; and

(4) offset costs for Texas Highways magazine and statewide travel operations.

§23.84. Mailing List.

(a) Sale. The department may sell the mailing list that contains the names and addresses of subscribers and purchasers. The list must be sold for fair-market value and may be sold directly by the department or through a contracted list broker for one-time use.

(b) Removal. The department shall remove from the mailing list information about a subscriber or purchaser who requests removal by letter, email, or telephone call. The department will make available on its website instructions how to request removal of the name and address of a subscriber or purchaser from the mailing list.

§23.85. Governmental Agency.

The department may disclose subscriber or purchaser information to an agency of this state or the United States if the agency certifies in writing that the information is necessary for the performance of the agency's duties.

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 September 22, 2014.

TRD-201404505

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8863



## CHAPTER 25. TRAFFIC OPERATIONS SUBCHAPTER G. INFORMATION LOGO SIGN AND TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM

### 43 TAC §§25.401, 25.404, 25.405, 25.407, 25.408

The Texas Department of Transportation (department) proposes amendments to §25.401, Definitions, §25.404, Specifications for Information Logo Signs, §25.405, Commercial Establishment Eligibility, §25.407, Logo Sign Program Operation, and §25.408, TOD Sign Program Operation, all concerning the Information Logo Sign and Tourist-Oriented Directional Sign Program.

#### EXPLANATION OF PROPOSED AMENDMENTS

Under Transportation Code, Chapter 391 the department is responsible for managing several sign programs designed to provide motorists with information. The programs are Specific Information Logo Signs (Logo), Major Shopping Area Guide Signs (MSAG), and Tourist-Oriented Directional Signs (TOD).

These amendments propose changes to the Logo and TOD sign program to update and streamline the administrative processes and to make changes necessary to comply with the current Texas Manual on Uniform Traffic Control Devices (TMUTCD).

Amendments to §25.401, Definitions, delete the definition of the term "dual logo" as it is no longer permitted under the 2011 TMUTCD.

Amendments to §25.404, Specifications for Information Logo Signs, make various changes to address revisions to the TMUTCD.

Amendments to §25.404(a)(2)(B) correct the requirement that a Logo sign without an exit number contain the term "NEXT RIGHT" instead of "NEXT EXIT" to be consistent with the 2011 TMUTCD.

Section 25.404(a)(2)(E) and (d) are amended to delete the references to dual logos which are no longer permitted under the 2011 TMUTCD.

Section 25.404(b)(2)(B) is amended to allow the display of supplemental messages on business logos for the availability of the alternative fuels compressed natural gas (CNG) and liquefied natural gas (LNG) as permitted under the 2011 TMUTCD.

Section 25.404(b)(2)(E) is also amended to allow the display of an "RV Access" supplemental message on business logos as permitted under the 2011 TMUTCD.

Section 25.404 is also amended by adding subsection (f) to provide that the department reserves the right of final approval of the content and placement of all signs and business logos. The department has been involved in the review of logos placed in the highway right of way and this change to the rule clarifies that position.

Amendments to §25.405, Commercial Establishment Eligibility, delete the reference to dual logos in §25.405(d)(3) which are no longer permitted under the 2011 TMUTCD.

Amendments to §25.407, Logo Sign Program Operation, delete the requirement in §25.407(b)(5) that required commercial establishments be notified by "certified mail" when determining which businesses will be displayed on a logo sign when there is more demand than spaces available as there are more efficient communications methods available and certified mail is no longer necessary.

Amendments to §25.408, TOD Sign Program Operation, delete the terms "nurseries" and "greenhouses" from the list of examples of eligible businesses in §25.408(a)(2)(B)(ii) as these are not typical tourist destinations as defined by this program.

Section 25.408(a)(2)(C)(i)(II) is amended to add the phrase "offer services of interest to tourists upon walk-up request such as retail sales, tours, overnight accommodations, or use of on-site services or facilities" to clarify that TOD signs are intended for business participants that rely predominately on tourists as their customers.

Section 25.408(h) is amended to clarify that wineries that had signs through a state signing program prior to the existence of the TODS program are eligible for participation in the program.

This amendment was needed to clarify that not all wineries with signs qualify but only those with signs prior to the implementation of the TOD program.

Section 25.408(j)(4)(D) is also amended to delete the requirement that commercial establishments be notified by "certified mail" when determining which businesses will be displayed on a TOD sign when there is more demand than spaces available as there are more efficient communication methods available and certified mail is no longer necessary.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Carol Rawson, Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be more efficient operation of the Information Logo Sign and Tourist-Oriented Directional Sign programs. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§25.401, 25.404, 25.405, 25.407 and 25.408 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Logo Sign Program." The deadline for receipt of comments is 5:00 p.m. on November 3, 2014. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.092, §391.093, and §391.0935, which provide the commission with the authority to establish rules regarding the Specific Information Logo Sign Program, and Transportation Code, §391.099, which authorizes the commission to adopt rules to administer and enforce the Tourist-Oriented Directional Sign Program.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 391, Subchapter D.

#### §25.401. Definitions.

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

(1) Business logo--A separate sign panel of specified dimensions attached to a specific information logo sign assembly and containing the commercial establishment name, symbol, brand, trademark, or combination.

(2) Commercial establishment--A privately owned business or corporation offering one or more of the primary motorist services.

(3) Commission--The Texas Transportation Commission.

(4) Contractor--A person, firm, group, or association in the State of Texas that acts as the authorized agent of the department in the operation of the specific information logo or the tourist-oriented directional (TOD) sign program.

(5) Department--The Texas Department of Transportation.

(6) Driveway access--A vehicle entrance, built in compliance with state and local standards and regulations, for use by the public providing access from a public street or highway to a commercial establishment or major shopping area.

~~[(7) Dual logo--A panel on a specific information logo sign containing the names of either:]~~

~~[(A) two food establishments in a shared space under common ownership; or]~~

~~[(B) a gas and food establishment in a shared space under common ownership.]~~

(7) [(8)] Eligible highway--

(A) for information logo signs, a controlled access highway on the designated state highway system; or

(B) for TOD signs and participating facilities, a non-controlled access highway located on the designated state highway system outside the corporate limits of a municipality with a population of 5,000 or more.

(8) [(9)] Executive director--The executive director of the Texas Department of Transportation or his or her designee.

(9) [(10)] Gross building area--Square footage of usable area within a building, or series of buildings, that is considered usable by the retail businesses and the public.

(10) [(11)] Information logo sign--A specific information logo sign assembly or a major shopping area guide sign.

(11) [(12)] Interchange--The intersection of the centerlines of an eligible highway and a crossroad.

(12) [(13)] Major portion--Fifty-one percent or more.

(13) [(14)] Major shopping area guide sign--A rectangular supplemental sign panel imprinted with the name of the retail shopping area as it is commonly known to the public and containing directional information.

(14) [(15)] Major shopping area ramp sign--A supplemental sign with the common name of the major shopping area, directional arrows, and/or distances placed near an eligible highway exit ramp or access road.

(15) [(16)] Multiple crossroad interchange--An interchange in which one exit in a direction of travel from an eligible highway provides the only point of access for two or more crossroads; the center of a multiple crossroad interchange is the mid-point of the intersection of the centerline of the eligible highway and centerlines of the affected crossroads.

(16) [(17)] Pharmacy services--The act of accepting and filling prescriptions by or under the supervision of a pharmacist licensed by the State of Texas.

(17) [(18)] Primary motorist service--Gas, food, lodging, camping, or 24-hour pharmacy services available to the traveling public.

(18) [(19)] Ramp business logo--A reduced size separate sign panel of specified dimensions attached to a ramp sign and containing the commercial establishment name, symbol, brand, trademark, or combination.

(19) [(20)] Ramp sign--A supplemental sign with ramp business logos or the name of the major shopping area, directional arrows, and distances placed near an eligible highway or eligible highway exit ramp.

(20) [(21)] Specific information logo sign assembly--A rectangular supplemental sign imprinted with the words "GAS," "FOOD," "LODGING," "CAMPING," or "24 HOUR Rx" or with a combination of those words, and the names (or business logos) of commercial establishments offering those services.

(21) [(22)] State--the State of Texas.

(22) [(23)] Texas MUTCD--Texas Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition, issued by the Texas Department of Transportation.

(23) [(24)] TOD sign assembly--An official sign structure erected under the TOD sign program containing one or more TOD panels and located on a TOD sign program eligible highway as defined in this subchapter.

(24) [(25)] TOD sign panel--An individual sign panel of a business or entity participating in the TOD program contained on a TOD sign assembly.

(25) [(26)] TOD sign program--Tourist-oriented directional sign program.

(26) [(27)] Trailblazer sign--A sign used in conjunction with the TOD sign program off of the designated state highway system that indicates the direction to the participating business or entity.

*§25.404. Specifications for Information Logo Signs.*

(a) Specific information logo signs.

(1) Design. A specific information logo sign assembly shall:

(A) have a blue background with a white reflective border;

(B) contain a principal legend equal in height to the directional legend;

(C) meet the applicable provisions of the Texas MUTCD;

(D) have background material that conforms with department specifications for reflective sheeting;

(E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details;

(F) provide vertical spacing and horizontal spacing for a balanced appearance of business logos.

(2) Content. A specific information logo sign shall contain:

(A) word legends for the following services: GAS, FOOD, LODGING, CAMPING, or "24 HOUR Rx";



(B) the exit number or, if exit numbers are not applicable, "NEXT RIGHT" ["NEXT EXIT"];

(C) no more than six business logos on one logo sign assembly; and

(D) no more than three types of services on a sign assembly; ~~and~~

~~{(E) no more than two dual logos.}~~

(3) Placement. Subject to approval of the department, a specific information logo sign shall be installed or placed:

(A) to conform to the following order of placement along the direction of travel: PHARMACY, CAMPING, LODGING, FOOD, GAS;

(B) according to the following priorities where available space is limited: GAS, FOOD, LODGING, CAMPING, and PHARMACY;

(C) to take advantage of natural terrain;

(D) to have the least impact on the scenic environment;

(E) to avoid visual conflict with other signs within the highway right-of-way;

(F) with a lateral offset equal to or greater than existing guide signs;

(G) at least 800 feet from the previous interchange and at least 800 feet from the exit direction sign at the interchange from which the services are available;

(H) without blocking motorists' visibility of existing traffic control and guide signs;

(I) in locations that are not overhead;

(J) where a motorist, after following the sign(s), can conveniently re-enter the highway and continue in the original direction of travel; and

(K) at least 800 feet between two large guide signs, but not excessively spaced.

(4) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate logo signs.

(b) Business logos.

(1) Design. A business logo:

(A) may not exceed 48 inches in width or 36 inches in height;

(B) may be any color or combination of colors; and

(C) may only be fabricated, erected, and maintained in conformance with current department specifications for aluminum signs and reflective sheeting.

(2) Content. A business logo may:

(A) consist of a registered trademark or a legend message identifying the name or abbreviation of the commercial establishment;

(B) contain supplemental information that is determined by the department to be essential motorist information, such

as "24 HOURS," "DIESEL," "CNG," or "LNG"; ~~limited to the word "DIESEL" or "PROPANE" on a gas logo, or "PROPANE" on a camping or gas logo, or the words "24 HOURS" on a gas or a food logo, the words "DIESEL," "PROPANE," and "24 HOURS" not to exceed six inches in height;~~

(C) contain a message, symbol, or trademark only if the message, symbol, or trademark does not resemble an official traffic control device; and

(D) contain text, symbols, or advertising only if the text, symbols, or advertising are related to the primary service of the specific information logo sign; and[-]

(E) contain an "RV Access [Friendly]" supplemental information or symbol indicating the business has facilities that accommodate the on-site movement and parking of recreational vehicles. The facility must meet the following criteria to be considered eligible to receive the RV Access supplemental information [Friendly symbol]:

(i) roadway access and egress must be hard surface, free of potholes, and ~~needs to be~~ at least 12 feet wide with a minimum swing radius of 50 feet to enter and exit the facility;

(ii) roadway access, egress, and parking facilities must be free of any electrical wires, tree branches, or other obstructions up to 14 feet above the surface;

(iii) facilities requiring short-term parking, such as restaurants or tourist attractions, must [are required to] have 2 or more spaces that are 12 feet wide and 65 feet long with a swing radius of 50 feet to enter and exit the spaces;

(iv) fueling facilities with canopies must [are required to] have a 14-foot clearance, and those selling diesel fuel must [are required to] have pumps with non-commercial nozzles;

(v) fueling facilities must allow for a pull-through [a] with a swing radius of 50 feet;

(vi) a campground must have ~~[for campgrounds,]~~ 2 or more spaces that are 18 feet wide and 45 feet long ~~[are required];~~ and

(vii) the commercial establishment [businesses] must [also] post on its site directional signing [on their sites], as needed, to those RV access ~~[friendly]~~ parking spaces and other on-site RV access ~~[friendly]~~ services, so that the motorist is given additional guidance upon leaving the public highway and entering the business establishment's property.

(c) Ramp signs.

(1) Design. A ramp sign shall:

(A) meet the applicable provisions of the Texas MUTCD;

(B) have a blue background with a white reflective border;

(C) conform with the latest department specifications for reflective sheeting for the background material of the sign; and

(D) be fabricated, erected, and maintained in conformance with the current department specifications for aluminum signs and roadside signs.

(2) Placement. Subject to approval by the department, a ramp sign may be placed along an exit ramp or access road, or at an intersection of an access road and crossroad when a commercial establishment's building or on-premise signing is not visible from that exit ramp, access road, or intersection.

(3) Content. A ramp business logo shall:

- (A) be no larger than 24 inches in width and 18 inches in height;
- (B) contain directional arrows and distances; and
- (C) be a duplicate of the business logo erected on a specific information logo sign.

~~[(4) Dual logos.]~~

~~[(1) An establishment may have two names displayed on a single logo sign panel if the establishment consists of:]~~

~~[(A) two food outlets in a shared space under common ownership; or]~~

~~[(B) gas and food outlets in a shared space under common ownership.]~~

~~[(2) The fee to a participating business for a dual logo will be the same as to the charge for a standard logo.]~~

~~[(3) No more than two dual logos may be installed per logo sign.]~~

~~[(4) Dual logos may not be installed on a specific information logo sign unless all available spaces for the "FOOD" or "GAS" specific service categories are full.]~~

~~[(5) If demand for space on a logo sign exceeds the available number of spaces, businesses requesting a dual logo must follow the same drawing process as described in §25.407 of this subchapter.]~~

(d) ~~[(e)]~~ Major shopping area guide signs.

(1) Design. A major shopping area sign shall:

- (A) have a blue background with a white reflective legend and border;
- (B) meet the applicable provisions of the Texas MUTCD;
- (C) have background, legend, and border material that conforms to department specifications for reflective sheeting;
- (D) not be illuminated externally or internally; and
- (E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details.

(2) Content. A major shopping area guide sign shall:

- (A) contain the name of the major shopping area as it is commonly known to the public; and
- (B) contain the exit number or, if exit numbers are not applicable, other directional information.

(3) Placement. Subject to approval of the department, a major shopping area guide sign shall be installed or placed:

- (A) so that it is independently mounted;
- (B) to take advantage of natural terrain;
- (C) to have the least impact on the scenic environment;
- (D) to avoid visual conflict with other signs within the highway right-of-way;
- (E) with a lateral offset equal to or greater than existing guide signs;
- (F) for both directions of travel on the eligible urban highway;

(G) without blocking motorists' visibility of existing traffic control and guide signs; and

(H) in locations that do not include overhead installation.

(4) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate major shopping area guide signs.

(e) ~~[(f)]~~ Major shopping area ramp signs.

(1) Design. A major shopping area ramp sign shall:

- (A) have a blue background with a white reflective legend and border;
- (B) meet the applicable provisions of the Texas MUTCD;
- (C) have background, legend, and border material that conforms to department specifications for reflective sheeting;
- (D) be fabricated, erected, and maintained in conformance with department specifications and fabrication details; and
- (E) not be illuminated internally or externally.

(2) Content. A ramp sign shall contain:

- (A) the name of the major shopping area as it is commonly known to the public; and
- (B) directional arrows and distances.

(3) Placement. Subject to approval of the department, the major shopping area ramp sign(s) may be placed along an exit ramp or access road, or at an intersection of an access road and crossroad if the major shopping area driveway access, buildings, or parking areas are not visible from that exit ramp, access road, or intersection.

(f) The department reserves the right of final approval of the content and placement of all signs and logos in this subchapter.

*§25.405. Commercial Establishment Eligibility.*

(a) General requirements for specific information logo sign eligibility. To be eligible to have a business logo placed on a specific information logo sign, a commercial establishment must:

- (1) offer at least one primary motorist service;
- (2) be located with driveway access to the access road (frontage road), ramp, or intersecting crossroad;
- (3) be visible, or have on-premise signing visible, from the commercial establishment's driveway access or the exit ramp, access road, crossroad, or intersection (or for an establishment that provides lodging, be visible from an eligible highway or an interchange on an eligible highway and be located on a street that is not more than two turns off the access or frontage road to the eligible highway); and
- (4) be located not farther than three miles from an interchange on an eligible highway, but if no gas, food, lodging, or camping service participating or willing to participate in the specific information logo sign program is located within three miles of an interchange, the department may approve commercial establishments of the same service:

- (A) if located not farther than six miles from the interchange;

(B) nine miles from the interchange if no service participating or willing to participate is located six miles from the interchange;

(C) 12 miles from the interchange if no service participating or willing to participate is located nine miles from the interchange; or

(D) 15 miles from the interchange if no service participating or willing to participate is located 12 miles from the interchange;

(5) comply with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex, or national origin; and

(6) post its hours of operation on or near the main entrance so that they are visible to the public during open and closed hours.

(b) Specific services eligibility. In addition to the general requirements for eligibility to have a business logo placed on a specific information logo sign, a commercial establishment must meet the requirements for at least one of the following primary motorist services.

(1) Gas. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "GAS," a commercial establishment must provide:

(A) vehicle services, including fuel, oil, and water;

(B) restroom facilities and drinking water;

(C) continuous operation for at least 12 hours per day, seven days a week; and

(D) a telephone accessible to the public.

(2) Food. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "FOOD," a commercial establishment must provide:

(A) a license or other evidence of compliance with public health or sanitation laws, if required by law;

(B) continuous operation at least 10 hours a day to serve two meals a day, six days a week;

(C) seating capacity for at least 16 people;

(D) public restrooms; and

(E) a telephone accessible to the public.

(3) Lodging. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "LODGING," a commercial establishment must provide:

(A) a license or other evidence of compliance with laws regulating facilities providing lodging, if required by law;

(B) a minimum of 10 guest rooms each of which provides sleeping accommodations; and

(C) a telephone accessible to the public.

(4) Camping. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "CAMPING," a commercial establishment must provide:

(A) a license or other evidence of compliance with laws regulating camping facilities, if required by law;

(B) a facility that is accessible to and capable of accommodating all types of recreational vehicles, travel trailers, campers, and tents;

(C) adequate parking accommodations;

(D) drinking water; and

(E) modern sanitary facilities.

(5) Pharmacy. To be eligible to have a business logo placed on a specific information logo sign carrying the legend "24 HOUR Rx," a commercial establishment must:

(A) be open for business 24 hours of each day; and

(B) provide pharmacy services 24 hours of each day.

(c) Multiple services eligibility. If a commercial establishment offers more than one primary motorist service, it will be eligible to display a business logo for each of those services on the appropriate specific information logo sign, provided that:

(1) minimum criteria for the service as described in §25.404 of this subchapter (relating to Specifications for Information Logo Signs) are met;

(2) the additional business logo(s) would not prevent participation by another eligible commercial establishment whose sole service would be displaced; and

(3) a business logo space is available.

(d) Variances.

(1) A person may request a variance from the information logo sign program. Requests for variances will only be considered if the existing requirements preclude participation in the program.

(2) A variance may be requested for a waiver of:

(A) an eligibility requirement except for the requirements listed in subsections (a)(1), (2) (except that an exception may be asked for an intersecting crossroad if the roadway with driveway access Tees into the frontage road of the eligible highway and is easily accessible or visible from that intersection), (5), and (6), and (b) of this section;

(B) location of the establishment;

(C) placement of the sign; or

(D) type of highway, except the highway must be on the state highway system and for logo signs at or near a grade-separated intersection.

~~[(3) Variances may not be requested for restrictions regarding dual logos.]~~

(3) [(4)] A person may submit a request for a variance to the department's local district engineer indicating:

(A) which requirement of the program it does not meet; and

(B) the variance requested.

(4) [(5)] The department may require additional documentation following generally accepted engineering standards, which may include, but not be limited to:

(A) traffic studies;

(B) maps indicating ramps, major arterials, ingress and egress points, existing signs and distances;

(C) traffic flow analysis including traffic counts to and from the commercial establishment or major shopping area;

(D) crash data and analysis; and

(E) detailed site plan of the commercial establishment or major shopping area, including but not limited to available parking, driveways, and location in reference to eligible highways.

(5) [(6)] The executive director may grant a variance if he or she determines it is feasible to place the sign at the requested location and the sign meets the requirements of the Texas MUTCD; and

(A) the variance will substantially promote traffic safety;

(B) the variance will substantially improve traffic flow;

(C) an overpass, highway sign or other highway structure unduly obstructs the visibility of an existing commercial sign; or

(D) the variance is necessary to substantially improve the efficiency and effectiveness of communicating information needed by people to safely and efficiently use the transportation system.

(6) [(7)] The executive director will indicate the reason for granting or denying a variance in writing.

§25.407. *Logo Sign Program Operation.*

(a) Commercial establishment and major shopping area application.

(1) Applications for commercial establishments or major shopping areas desiring to participate in the information logo sign program are available upon request from the department.

(2) A commercial establishment or major shopping area desiring to participate in the information logo sign program must submit an application to the contractor and verify that all requirements are met. Applications must be submitted to the location as stated on the application form. The contractor will verify the eligibility of each applicant.

(3) For commercial establishments, a separate application is required for each primary motorist service per interchange per direction of travel. Only one application per commercial establishment per primary motorist service per direction of travel per interchange will be accepted.

(4) Applications will be reviewed by the contractor and applicants will be notified in writing if qualified or rejected. Rejected applications will be returned and deficiencies noted.

(5) Rejected applicants may resubmit their application when the noted deficiencies have been corrected.

(6) To be eligible for the selection process for the available business logo space(s), available first alternate position, or available second alternate position, a commercial establishment must have submitted a qualified application before the commercial establishment application deadline.

(7) The commercial establishment application deadline for the initial installation for a new or existing logo sign assembly drawing will be set as specified by the contractor and approved by the department.

(8) Qualified applications received after the commercial establishment application deadline will be placed on file and considered eligible for future drawings.

(b) Commercial establishment selection.

(1) Available business logo space(s) and relative placement of business logos on the specific information logo sign, available first alternate position, and available second alternate position will be awarded by drawing of the qualified applications received before

the commercial establishment application deadline. The relative placement of business logos in available space(s), in order of selection, is upper left, upper middle, upper right, lower left, lower middle, and lower right. For a specific information logo sign that includes more than one service, the relative placement of business logos in available space(s), in order of selection, is left to right and top to bottom for each portion of the sign designated for each service.

(2) The drawing will be held publicly by the contractor on a date specified by the contractor and approved by the department in the presence of two or more department employees. When business logo spaces become available, additional drawings will be held publicly as needed in the presence of two or more department employees. Additional drawings of qualified applicants will be held no earlier than 20 days nor later than 45 days after the commercial establishment application deadline.

(3) When a business logo space(s) becomes available, the first and second alternates have first right of refusal, respectively, for the available business logo space. If the first alternate accepts an available business logo space, the second alternate then becomes the first alternate with first right of refusal for any existing or future available business logo space. Any remaining available business logo space(s), available first alternate position, or available second alternate position are awarded by the drawings.

(4) If the number of qualified applicants is less than or equal to the number of available business logo space(s) at the time of the commercial application deadline, the available spaces will be awarded to the qualified applicants. The random drawing will determine only the relative placement of the business logo signs in the available space(s).

(5) The contractor shall notify the commercial establishment [by certified mail] of the award of specific information business logo sign space within 10 calendar days of the date of the award. To accept the award, the commercial establishment must execute a written participation agreement with the contractor within 30 calendar days of the date of the award. The participation agreement shall be in a form as prescribed by the department and shall, at a minimum, contain all applicable provisions prescribed by this subchapter [undesignated head].

(c) Responsibilities and rights of commercial establishment.

(1) The commercial establishment must provide a business logo and, if necessary, ramp business logo(s) within 60 days of notification by the contractor of the contractor's intent to erect the specific information logo signs or ramp signs.

(2) A commercial establishment may renew its participation agreement with the contractor on an annual or multi-year basis no later than the date specified by the contractor and approved by the department. If the commercial establishment does not renew the agreement with the contractor, the contractor will remove the business logo at the end of the participation agreement, and will make the vacated space(s) available to other commercial establishments pursuant to subsection (b) of this section.

(d) Covering of business logo. A business logo and the ramp business logo(s) of a commercial establishment may be covered by the contractor if the commercial establishment is temporarily closed for a period not exceeding 30 calendar days. Unless removed pursuant to subsection (e) of this section, the business logo and ramp business logo(s) will remain covered until the commercial establishment reopens.

(e) Removal of business logo.

(1) A business logo of a participating commercial establishment shall be removed by the contractor if the commercial establishment:

- (A) ceases to exist;
- (B) fails to pay the annual rental fee or other fees within 30 calendar days of the due date as specified on the agreement;
- (C) is temporarily closed for more than 30 calendar days;
- (D) does not meet the minimum eligibility requirements of §25.405 of this subchapter, and all corrections are not made within 30 calendar days of written notification;
- (E) is sold, and the new commercial establishment does not continue the original primary motorist service or does not meet the minimum requirements for the primary motorist service;
- (F) has not provided a replacement business logo sign within 60 calendar days of written notification that the business logo is missing, damaged, broken, or faded; or
- (G) relocates and is no longer eligible for participation in the program.

(2) Removal of a business logo by the contractor will include the removal of the commercial establishment's ramp business logo sign(s).

(3) If the business logo is removed due to the default of the commercial establishment to perform within the terms of the participation agreement and this subchapter, the participation agreement is terminated between the commercial establishment and the contractor. All funds paid to the contractor by the commercial establishment are forfeited. Upon removal of a business logo, the vacated space becomes available pursuant to subsection (b) of this section. A replacement commercial business is selected, as stated in the commercial establishment selection process.

(4) If the business logo is removed permanently due to actions of the department, the participation agreement is terminated between the commercial establishment and the contractor. Advance funds paid to the contractor by the commercial establishment will be prorated as per the date of removal, and any remaining amounts refunded to the commercial establishment.

(f) Responsibilities and rights of the major shopping area. The major shopping area may renew its participation agreement with the contractor on an annual or multi-year basis at a date specified by the contractor and approved by the department. If the major shopping area does not renew the agreement with the contractor, the contractor will remove the guide signs and ramp signs at the end of the participation agreement.

(g) Covering or removal of major shopping area guide sign.

(1) A major shopping area guide sign(s) of a major shopping area may be covered by the contractor if:

- (A) the major shopping area is temporarily closed for a period not exceeding 30 calendar days; or
- (B) the department finds the parking is so insufficient that it causes undue congestion to the state highway system.

(2) A major shopping area guide sign of a major shopping area may be covered until:

- (A) the property reopens; or
- (B) the department finds there is now sufficient parking.

(3) A major shopping area guide sign of a participating major shopping area shall be removed by the contractor if the major shopping area:

- (A) ceases to exist;
- (B) fails to pay the annual rental fee or other fees within 30 calendar days of the due date as specified in the agreement;
- (C) is temporarily closed for more than 30 calendar days;
- (D) does not meet the minimum eligibility requirements of §25.406 of this subchapter, and all corrections are not made within 30 calendar days of written notification;
- (E) is sold, and the new major shopping area does not continue as a public retail business; or
- (F) does not correct the parking insufficiency within 90-days [~~90-days~~] notice by the department.

(4) Removal of a major shopping area guide sign by the contractor will include the removal of the major shopping area's ramp sign(s).

(5) If the major shopping area guide sign is removed due to the default of the major shopping area to perform within the terms of the participation agreement and the requirements as stated herein, the participation agreement is terminated between the major shopping area and the contractor. All funds paid to the contractor by the major shopping area are forfeited.

(6) If the major shopping area guide sign is removed permanently due to actions of the department, the participation agreement is terminated between the major shopping area and the contractor. Advance funds paid to the contractor by the major shopping area will be prorated as per the date of removal, and any remaining amounts refunded to the major shopping area.

§25.408. *TOD Sign Program Operation.*

(a) Eligibility. A facility eligible for a TOD sign panel is a winery or other business or non-profit entity including a farm, ranch or other tourist activity that meets the following requirements:

(1) General criteria. An eligible facility must:

- (A) derive a major portion of its income or visitors during the normal business season from highway users not residing within 50 miles from the facility;
- (B) provide a tourist-oriented service or tourist-oriented product of significant interest to the traveling public;
- (C) comply with all state and federal laws relating to:
  - (i) provision of public accommodation without regard to race, religion, color, age, sex, or national origin; and
  - (ii) licensing and approval of service facilities; and
- (D) be located within five driving miles from the eligible highway;
- (E) provide modern restroom facilities and drinking water;
- (F) be clean and in good repair; and
- (G) be in compliance with provisions regarding illegal signs as defined in the Highway Beautification Act of 1965 (23 USC 131).

(2) Specific requirements. In addition to the general requirements, an eligible facility must meet the following specific re-

quirements for at least one of the following categories of TOD sign panels.

(A) Wineries. To be eligible for a TOD sign panel a winery must:

- (i) produce wine on the premises;
- (ii) conduct regularly scheduled public tours of the grounds or facilities or provide such tours upon walk-up request;
- (iii) market the product on the premises as a retail sale;
- (iv) have a wine tasting area on the premises; and
- (v) have a winery permit issued by the State of Texas.

(B) Agritourism.

(i) To be eligible for a TOD sign panel an agritourism applicant must:

- (I) sow, cultivate, or produce an agricultural product on site;
- (II) devote a minimum of five acres of land to the production of an agricultural product;
- (III) conduct regularly scheduled public tours of the grounds or facilities or provides such tours upon walk-up request;
- (IV) market the product on the premises as a retail sale; and
- (V) be open twelve months a year or during the normal seasonal period.

(ii) Examples of eligible agritourism businesses include, but are not limited to, farms, ranches, ~~nurseries, greenhouses,~~ herb farms, wildflower farms, and farmers markets.

(C) Other commercial tourist-oriented businesses or entities.

(i) To be eligible for a TOD sign panel, an eligible commercial tourist-oriented applicant must:

(I) provide a unique or unusual commercial or non-profit service or product of significant interest to the tourist community;

(II) offer services of interest to tourists upon walk-up request, such as retail sales, tours, overnight accommodations, or use of on-site services or facilities;

(III) [(H)] be open for business at least five days a week, and one of the five days must be Saturday or Sunday; and

(IV) [(H)] be a tourist destination or an accommodation that is not part of a franchise or national chain.

(ii) Examples of eligible commercial tourist-oriented businesses include, but are not limited to, art/craft centers, art galleries, auction houses, amphitheaters, amusement parks, antique businesses, aquariums, arboretums, arenas, auditoriums, bed and breakfasts, boat landings/marinas, civic centers, concert halls, equestrian centers, fairgrounds, golf courses, museums, natural attractions, pavilions, stadiums, water oriented businesses, and wildlife preserves.

(3) Ineligible facilities. Facilities excluded from participation in the TOD sign program include, but are not limited to, adult entertainment facilities, animal shelters, cemeteries, convenience stores, funeral homes, gas stations, industrial parks or plants, media facilities,

local jails, local police or sheriffs' offices, movie theaters, office parks, radio stations, television stations, truck terminals, post offices, medical facilities, retirement homes, veterans facilities, veterinary facilities, mobile home parks, and residential or commercial subdivisions.

(4) Final determination of eligibility. The department will make all final determinations regarding an applicant's eligibility to participate in the TOD sign program.

(b) Application.

(1) Applications for eligible facilities desiring to participate in the TOD sign program are available upon request from the department.

(2) An eligible facility desiring to participate in the TOD sign program must submit an application to the contractor and verify that all eligibility requirements are met. Applications must be submitted to the location stated on the application form. The contractor will verify the eligibility of each applicant.

(3) Applications will be reviewed by the contractor and applicants will be notified in writing of the application being approved or disapproved according to the following schedule.

(A) Within 30 days the contractor will notify the business that:

- (i) the application has been received; and
- (ii) that the application is complete, or that additional information is required to complete the application.

(B) The contractor will approve or disapprove the application:

(i) within 60 days after the business submits the application if no additional information is required; or

(ii) within 30 days after the date the business submits all of the additional information requested by the contractor under subparagraph (A) of this paragraph.

(c) Specifications for TOD sign assemblies and sign panels.

(1) Sign assembly. A TOD sign assembly shall:

- (A) have a blue background with a white reflective border;
- (B) meet all applicable provisions of the MUTCD;
- (C) have background material which conforms with department specifications for reflective sheeting; and
- (D) be fabricated, erected, and maintained in conformance with department specifications and fabrication details.

(2) Order of priority. TOD sign panels will be assigned to eligible facilities in the following priority: wineries, agritourism, and other commercial tourist-oriented businesses.

(3) Content. A TOD sign panel will contain no more than the following items as space limitations will allow:

- (A) a maximum of two lines of text describing the name of the eligible facility;
- (B) a directional arrow indicating the direction of and distance to the eligible facility; or
- (C) a symbol or icon depicting the type of eligible facility as designed and approved by the department.

(4) Panel limitations. Each TOD sign assembly may have no more than three TOD sign panels.

(5) Placement. Subject to approval by the department, a TOD sign assembly shall be installed or placed:

(A) only on TOD eligible highways as defined in this subchapter;

(B) to take advantage of natural terrain;

(C) to have the least impact on the scenic environment;

(D) to avoid visual conflict with other signs within the highway right-of-way;

(E) with a lateral offset equal to or greater than existing guide signs;

(F) in advance of the intersection or business entrance on the TOD eligible highway;

(G) at least 200 feet from any other traffic control devices; and

(H) so that it does not block motorists' visibility of existing traffic control and guide signs.

(6) Maximum number of TOD sign assemblies. The maximum number of TOD sign assemblies will be limited to three per intersection approach subject to the placement requirements contained in this subchapter.

(7) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate TOD signs.

(d) TOD trailblazer signs.

(1) At each turn required to be made by the traveling public from a TOD sign to the participating facility, a TOD trailblazer sign shall be in place directing the turn.

(2) Any costs associated with installation and maintenance of trailblazer signs is the responsibility of the participating facility and is not part of the TOD contract between the department and contractor.

(3) No TOD sign will be installed until all necessary trailblazer signs have been installed by the participating facility.

(4) When trailblazer signs are required to be installed off the state highway system, it will be the participating facility's responsibility to contact the private property owner or appropriate local jurisdiction for approval to install these signs.

(5) If at any time the department determines that trailblazer signing off the state highway system is not adequate to direct the motorist, the participating facility shall be notified. If action is not taken by the participating facility to correct this problem within 60 days, the TOD sign panel on the state highway system shall be removed or covered at the discretion of the department.

(e) TOD sign panel order. Order of placement of TOD sign panels will be determined by the department so as to maximize the number of participating businesses.

(f) Removal of TOD sign panel.

(1) A TOD sign panel of an eligible facility shall be removed by the contractor if the facility:

(A) ceases to exist;

(B) fails to pay the annual rental fee or other fees within 30 calendar days of the due date as specified in the agreement;

(C) does not meet the minimum requirements as stated in subsection (a) of this section, and all corrections are not made within 30 calendar days of written notification;

(D) is sold, and the new eligible facility does not continue the original tourist-oriented activity or service, or does not meet the minimum requirements for a TODS eligible facility; or

(E) relocates and is no longer eligible for participation in the program.

(2) If the TOD sign panel is removed due to the default of the eligible facility to perform within the terms of the participation agreement and this subchapter, the participation agreement is terminated between the eligible facility and the contractor. All funds paid to the contractor by the eligible facility are forfeited. Upon removal of a TOD sign panel, the vacated space becomes available pursuant to the procedures contained in this subchapter.

(3) If the TOD sign panel is removed permanently due to actions of the department, the participation agreement is terminated between the eligible facility and the contractor. Advance funds paid to the contractor by the eligible facility will be pro-rated as per the date of removal, and any remaining amounts refunded to the commercial establishment.

(g) Seasonal facilities. Seasonal facilities may participate in the TOD sign program provided they meet the general eligibility criteria for participation in the program.

(h) Existing winery signs prior to 2005. Notwithstanding the requirements of this subsection, a winery that had a sign maintained by the department prior to enactment of the TODS Program in 2005 is [Wineries that currently have signs maintained by the department will be] eligible to participate in the TOD sign program.

(i) Variances. Variances may not be requested for any eligibility requirements for TOD sign panels as described in this section.

(j) Allocation process for excess demand. The contractor will hold a public drawing to assign TOD sign panel spaces when there are more eligible facilities wishing to participate in the program than TOD panel spaces available at a given location.

(1) To be eligible for the selection process for the available TOD space(s), an eligible facility must have submitted a qualified application before the TOD sign program application deadline.

(2) The application deadline for the initial installation for a new or existing TOD sign assembly drawing will be set at a date specified by the contractor and approved by the department.

(3) Qualified applications received after the deadline will be placed on file and considered eligible for future drawings.

(4) Selection.

(A) Available TOD sign panel space(s) on the specific TOD sign assembly will be awarded by drawing of the qualified applications received before the application deadline.

(B) Spaces will be awarded based on the following priority: wineries, agritourism and other commercial tourist-oriented businesses.

(C) The drawing will be held publicly by the contractor at a date specified by the contractor and approved by the department in the presence of two or more department employees. When additional TOD sign panel spaces become available, additional drawings will be held as needed at a date specified by the contractor and approved by the department.

(D) The contractor shall notify applicants [by certified mail] of the award of the TOD sign panel space within 10 calendar days of the date of the award. To accept the award, the applicant must execute a written participation agreement with the contractor within 30 calendar days of the date of the award. The participation agreement shall be in a form as prescribed by the department and shall, at a minimum, contain all applicable provisions prescribed in this subchapter.

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

Filed with the Office of the Secretary of State on September 22, 2014.

TRD-201404506

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683



## CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

### SUBCHAPTER H. HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY PERMITS

#### 43 TAC §28.100, §28.102

The Texas Department of Transportation (department) proposes amendments to §28.100 and §28.102, concerning Hidalgo County Regional Mobility Authority permits.

#### EXPLANATION OF PROPOSED AMENDMENTS

These amendments grant the Hidalgo County Regional Mobility Authority (HCRMA) additional authority to issue permits for the operation of oversize/overweight vehicles on the designated highways within the county. House Bill 474 of the 83rd Legislative Session, 2013, authorized the commission to designate additional routes for which HCRMA could issue oversize and overweight permits. The department worked with HCRMA to identify additional routes that would benefit the HCRMA permitting process and the motor carrier operators.

Amendments to §28.100 add language to state that the purpose of the rule is to authorize the issuance of permits by the HCRMA to roads listed under Transportation Code §623.322, as added by Chapter 1135 (H.B. 474), Acts of the 83rd Legislature, Regular Session, 2013, and roads designated by the commission. This language identifies the statutory change and the commission's expanded powers to designate additional routes.

The language in §28.102 is amended to list the additional routes designated by the commission for which HCRMA is authorized to issue permits for the operation of oversize/overweight vehicles. The listed roads to be added include: US 281/Military Highway from Spur 29 to FM 1015; FM 1015 from US 281/Military Highway, south to the Progresso International Bridge; FM 2557 from US 281/Military Highway to Interstate 2; FM 3072 from Veteran Boulevard ("I" Road) to Cesar Chavez Road and US 281 (Cage Boulevard) from Spur 600 to Anaya. These sections of roadways will expand Hidalgo County Regional Mobility Authority's permitting authority. This provides the HCRMA greater author-

ity in the operation of the roadways within their jurisdiction and allows them to provide a more complete service to the motor carriers within the county.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for the state and only minimal fiscal impact for the local government as a result of enforcing or administering the amendments. The cost of processing the permits and maintaining the affected roads will be offset by the permit fees collected by HCRMA.

John F. Obr, Interim Director, Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Obr has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be transportation efficiency and improved public safety. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed §28.100 and §28.102 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Hidalgo County RMA." The deadline for receipt of comments is 5:00 p.m. on November 3, 2014. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.328, which allows the commission to authorize the authority to issue permits for the movement of oversize or overweight vehicles.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter Q, as added by Chapter 1135 (H.B. 474), Acts of the 83rd Legislature, Regular Session, 2013.

#### §28.100. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter Q, as added by House Bill 474, Acts of the 83rd Legislature, Regular Session, 2013, the commission may authorize Hidalgo County Regional Mobility Authority to issue permits for the movement of oversize or overweight vehicles carrying cargo on roads designated by Transportation Code, §623.322 and as designated by the Commission under this subchapter. This subchapter sets forth the requirements and procedures applicable to the issuance of permits by Hidalgo County Regional Mobility Authority for the movement of oversize and overweight vehicles.

#### §28.102. Authority's Powers and Duties.



(a) Authority authorized to issue permits. The authority may issue a permit and collect a fee for the movement within the territory of the authority [~~on the roads designated by Transportation Code, §623.322~~] of a vehicle or vehicle combination that exceeds the vehicle size or weight limits specified by Transportation Code, Chapter 621, Subchapters B and C, but does not exceed loaded dimensions of 12 feet wide, 16 feet high, and 110 feet long, and does not exceed 125,000 pounds gross weight for travel on:[-]

(1) the roads designated by Transportation Code, §623.322;

(2) US 281/Military Highway from Spur 29 to FM 1015;

(3) FM 1015 from US 281/Military Highway, south to the Progresso International Bridge;

(4) FM 2557 from US 281/Military Highway to Interstate 2; FM 3072 from Veteran Boulevard ("I" Road) to Cesar Chavez Road; and

(5) US 281 (Cage Boulevard) from Spur 600 to Anaya Road.

(b) Surety bond. The department may require the authority to post a surety bond in the amount of \$500,000 for the reimbursement of the department for actual maintenance costs of roads identified in subsection (a) of this section [designated by Transportation Code, §623.322] if revenue collected from permits issued under this subchapter is insufficient to pay for those costs and the authority fails to reimburse the department for those costs.

(c) Verification of permits. The authority shall provide law enforcement and department personnel access to any of the authority's property to verify compliance with this subchapter by the authority or another person.

(d) Training. The authority shall provide or obtain any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training on request by the authority.

(e) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter with which the authority must comply for revenue collections and any payment made to the department under subsection (i) of this section.

(f) Audits. The department may conduct audits annually or at the direction of the executive director of all permit issuance activities of the authority. To insure compliance with applicable law, audits at a minimum will include a review of all permits issued, financial transaction records related to permit issuance and vehicle scale weight tickets, and the monitoring of personnel issuing permits under this subchapter.

(g) Revocation of authority to issue permits. If the department determines as a result of an audit that the authority is not complying with this subchapter or other applicable law, the executive director will issue a notice to the authority allowing 30 days for the authority to correct any non-compliance issue. If the department determines that, after that 30-day period, the authority has not corrected the issue, the executive director may revoke the authority's authority to issue permits under this subchapter. The authority may appeal to the commission in writing the revocation of its authority under this subsection. If the authority appeals the revocation, the authority's authority to issue permits under this subchapter remains in effect until the commission makes a final decision on the appeal.

(h) Fees. Fees under this subchapter may be collected, deposited, and used only as provided by Transportation Code, §623.323. The authority may determine acceptable methods of payment. All fees

transmitted to the department must be in U.S. currency. On revocation of the authority's authority to issue permits, termination of the maintenance contract entered into under subsection (i) of this section, or expiration of this subchapter, the authority shall pay to the department all permit fees collected by the authority, less allowable administrative costs.

(i) Maintenance contract. The authority shall enter into a contract with the department for the maintenance of roads identified in subsection (a) of this section [designated by Transportation Code, §623.322] for which a permit may be issued under this subchapter. The contract will cover routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures, as determined by the department to maintain the current level of service, and may include other types of maintenance.

(j) Reporting. The authority shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected during the period covered by the report. The report must be in a format approved by the department.

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

Filed with the Office of the Secretary of State on September 22, 2014.

TRD-201404507

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 463-8683

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**PART 10. TEXAS DEPARTMENT OF  
MOTOR VEHICLES**

**CHAPTER 217. VEHICLE TITLES AND  
REGISTRATION**

**SUBCHAPTER B. MOTOR VEHICLE  
REGISTRATION**

**43 TAC §217.44**

The Texas Department of Motor Vehicles (department) proposes amendments to §217.44, Registration Reciprocity Agreements. The department simultaneously withdraws the proposed amendments to §217.44, which were published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4225).

**EXPLANATION OF PROPOSED AMENDMENTS**

The proposed amendments to §217.44 are necessary to implement the department's decision to issue two license plates to certain vehicles under the International Registration Plan (IRP). Currently, §217.44 says the department will issue one license plate, which shall be placed on the front of a power unit and on the rear of a trailer. Peace officers are stopping the drivers of some of the power units that are not drawing a trailer or semi-trailer because the peace officers are accustomed to seeing the license plate on the rear of these types of power units. To address this issue, the department will issue two license plates to the power units that are not designed and used primarily for

drawing other vehicles. In addition, a proposed amendment to §217.44 tells the vehicle owner where to place the second license plate.

The proposed amendments to §217.44 are also necessary to adopt by reference the current edition of the IRP and the IRP Audit Procedures Manual, as well as future amendments to the IRP. A proposed amendment deletes the definition of the word "distance" because the IRP already addresses the issue of distance and how the registration fees are calculated.

The other changes to §217.44 are necessary to correct references to statutes, rules, and language in statutes, rules and the IRP. The proposed amendments also correct grammatical errors, change punctuation for clarity, provide a definition for the department's Regional Service Centers, and address internal changes within the department.

#### FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be minor fiscal implications for state or local governments as a result of enforcing or administering the amendments. The department pays approximately \$1.61 per license plate for these vehicles. Since the department will issue two license plates for certain vehicles, the department's costs will increase. It is estimated that approximately 32,305 vehicles will receive two apportioned license plates, instead of one.

Jimmy Archer, Director of the Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT AND COST

Mr. Archer has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be more clarity in §217.44. In addition, the operators of certain apportioned vehicles will be issued a second license plate to place on the rear of the vehicle because peace officers are accustomed to seeing a license plate on the rear of these types of vehicles. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

#### TAKINGS IMPACT ASSESSMENT

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

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, by mail at 4000 Jackson Avenue, Austin, Texas 78731, or by email to [rules@txdmv.gov](mailto:rules@txdmv.gov). The deadline for receipt of comments is 5:00 p.m. on November 3, 2014.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are

necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §502.091, which authorizes the department to adopt rules to carry out the IRP; and Transportation Code, §504.010, which authorizes the board to adopt rules regarding the placement of license plates for a motor vehicle.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §§502.091, 504.010, and 504.943.

#### §217.44. Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.091 [~~§502.054~~] to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

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

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Motor Vehicles.

(3) Director--The director of the Motor Carrier Division, [~~Vehicle Titles and Registration Division,~~] Texas Department of Motor Vehicles.

~~[(4) Distance--The distance an apportioned motor vehicle is:]~~

~~[(A) expected to travel in a member jurisdiction during a registration year as reported by an applicant; or]~~

~~[(B) actually operated in a member jurisdiction during a reporting period.]~~

(4) ~~[(5)]~~ Executive director--The chief executive officer of the department.

(5) Regional Service Center--A department office which provides specific services to the public, including replacement titles, bonded title rejection letters, and apportioned registration under the International Registration Plan (IRP).

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter into a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The IRP [~~International Registration Plan~~] is a registration reciprocity agreement among states of the United

States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the January 1, 2014, edition of the IRP. Effective January 1, 2015, the department adopts by reference the amendments to the IRP with an effective date of January 1, 2015. Effective July 1, 2016, the department adopts by reference the amendment to the IRP with an effective date of July 1, 2016. The department further adopts by reference the July 1, 2013, edition of the IRP Audit Procedures Manual. In the event of a conflict between this section and the IRP or the IRP Audit Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the documents are available for review in the Motor Carrier Division, Texas Department of Motor Vehicles. [most currently adopted edition of the International Registration Plan (IRP). This document will be periodically amended by its members. Copies of the document are available for review in the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin.] Copies are also available on request. The following words and terms, when used in the IRP or in paragraph (2) of this subsection, [this subparagraph.] shall have the following meanings, unless the context clearly indicates otherwise.

(i) Apportionable vehicle--Any vehicle--[;]except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, buses used in transportation of chartered parties, and government-owned vehicles--[;] used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used either for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(I) is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds (11,793.401 kilograms); [~~or 11,793.401 kilograms;~~]

(II) is a power unit having three or more axles, regardless of weight;

(III) is used in combination, when the weight of such combination exceeds 26,000 pounds (11,793.401 kilograms) [~~or 11,793.401 kilograms~~] gross vehicle weight; or

(IV) at the option of the registrant, trucks, truck tractors, or [and truck tractors, and] combinations of vehicles having a gross vehicle weight of 26,000 pounds (11,793.401 kilograms) or less; or [or 11,793.401 kilograms or less and] buses used in transportation of chartered parties.

(ii) Commercial vehicle--A vehicle or combination of vehicles designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.

(iii) Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.

(iv) Established place of business--A physical structure owned or leased within the state of Texas by the applicant or fleet registrant and maintained in accordance with the provisions of the IRP. [International Registration Plan.]

(v) Fleet distance--All distance operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director, along [together] with additional documentation as required by the director.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23 of this title (relating to Methods of Payment), the department will issue one or two license plates and a cab card for each vehicle registered. [in the form of a check, cashier's check, money order, or electronic funds transfer through an automated clearinghouse (ACH) made payable in United States funds, the department will issue one license plate and cab card for each vehicle registered.]

(E) Display.

(i) The department will issue one license plate for a tractor, truck tractor, trailer, and semi-trailer. The license plate issued to a tractor or a truck tractor shall be installed on the front of the tractor or truck tractor, and the license plate issued for a trailer or semi-trailer shall be installed on the rear of the trailer or semi-trailer. [The license plate issued to a power unit shall be installed on the front of the vehicle, and the license plate issued for a trailer shall be installed on the rear of the vehicle.]

(ii) The department will issue two license plates for all other vehicles that are eligible to receive license plates under the IRP. Once the department issues two license plates for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate shall be installed on the rear of the vehicle.

(iii) [~~(ii)~~] The cab card shall be carried at all times in the vehicle in accordance with the IRP [Transportation Code, §621.002].

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle [~~truck~~] on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100 percent of the Texas registration fees, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. [§502.183 and IRP guidelines.] Any registration fees refunded

to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation. The director or the director's designee may cancel a registrant's apportioned registration and all privileges provided by the IRP if the registrant:

(i) submits payment in the form of a check that is dishonored;

(ii) files or provides erroneous information to the department; or

(iii) fails to:

(I) remit appropriate fees due each jurisdiction in which the registrant is authorized to operate;

(II) meet the requirements of the IRP concerning established place of business;

(III) provide operational records in accordance with subparagraph (F) of this paragraph;

(IV) provide an acceptable source document as specified in the IRP; or

(V) pay an assessment pursuant to subparagraph (G) of this paragraph.

(J) Enforcement of cancelled registration.

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment or cancellation, the effective date of the assessment or cancellation, and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment or cancellation unless and until that assessment or cancellation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment or cancellation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation of apportioned license plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment or cancellation is abated

unless and until affirmed or disaffirmed by order of the Board of the Texas Department of Motor Vehicles. [~~Board of Motor Vehieles.~~]

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled registrant if all applicable fees and assessments due on the previously canceled apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas title [~~Certificate of Title~~] as prescribed by Transportation Code, Chapter 501 and §217.3 of this title (relating to Motor Vehicle Titles); or [~~chapter (relating to Motor Vehicle Certificates of Title); or~~]

(II) registration receipt to evidence title for registration purposes only (Registration Purposes Only) [~~Registration Purposes Only~~] as provided for in Transportation Code, §501.029 and §217.22(b)(4) of this title [~~subchapter~~] (relating to Motor Vehicle Registration).

(ii) Title application. A registrant who is applying for a Texas title as provided for in clause (i)(I) of this subparagraph [~~certificate of title as provided for in subparagraph (L)(i)(I) of this paragraph~~] and is requesting authorization for a temporary cab card, must submit a photocopy of the title application receipt issued by the county tax assessor-collector's office to a Regional Service Center [~~assessor-collectors office to a Vehicle Titles and Registration Division Regional Office~~] by email, fax, overnight mail, or in person.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this

subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Regional Service Center [~~Vehicle Titles and Registration Division Regional Office~~] by email, fax, or overnight mail or in person.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and:

(I) make payment of the applicable registration fees to the department as provided by §209.23; and [in the form of a check, cashier's check, money order, or electronic funds transfer through an automated clearinghouse (ACH) payable to the department in United States funds; and]

(II) afterwards, mail or deliver payment of the [certificate of] title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-collector [assessor collector] in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Regional Service Center [~~Vehicle Titles and~~

~~Registration Division Regional Office~~] within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

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 September 19, 2014.

TRD-201404482

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: November 2, 2014

For further information, please call: (512) 465-5665

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Andrea Ballesteros

# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 416. MENTAL HEALTH COMMUNITY-BASED SERVICES

##### SUBCHAPTER C. JAIL-BASED COMPETENCY RESTORATION PROGRAM

###### 25 TAC §§416.76 - 416.93

The Department of State Health Services withdraws proposed new §§416.76 - 416.93 which appeared in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2031).

Filed with the Office of the Secretary of State on September 22, 2014.

TRD-201404494

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: September 22, 2014

For further information, please call: (512) 776-6972



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 217. VEHICLE TITLES AND REGISTRATION

##### SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

###### 43 TAC §217.44

The Texas Department of Motor Vehicles withdraws the proposed amendment to §217.44, which appeared in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4225).

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

TRD-201404481

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: September 19, 2014

For further information, please call: (512) 465-5665



##### SUBCHAPTER H. DEPUTIES

###### 43 TAC §§217.112 - 217.116

The Texas Department of Motor Vehicles withdraws proposed new §§217.112 - 217.116 which appeared in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3974).

Filed with the Office of the Secretary of State on September 16, 2014.

TRD-201404424

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: September 16, 2014

For further information, please call: (512) 465-5665



☆ T E X A S ✈️ ☺



Stephanie Garcia



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 93. TRADEMARKS

The Office of the Secretary of State adopts amendments to §§93.122, 93.131, and 93.132, concerning trademarks. The amendments are adopted without changes to the proposed text as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6001) and will not be republished.

The amendments to Chapter 93 rules conform to the statutory revisions to Chapter 16 of the Business & Commerce Code, enacted by the 83rd Legislature, Regular Session, in Senate Bill 1033, effective September 1, 2013.

Amended §93.122 sets forth the period of time a registrant has to renew a registered mark. Pursuant to SB 1033, a registered mark may only be renewed during the six months immediately preceding expiration of the current registration.

Section 93.131 and §93.132 are updated to include the requirement that certain information necessary for the Secretary of State to issue an updated certificate of registration be included with an assignment of registration or an instrument relating to a transfer of ownership or name change, when an amended certificate of registration is requested.

No comments were received regarding adoption of the amendments.

#### SUBCHAPTER L. TERM AND RENEWAL

##### 1 TAC §93.122

The amendments to §93.122 are adopted under the authority of §2001.001, Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066, Texas Business & Commerce 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 September 16, 2014.

TRD-201404421

Briana Godbey

Attorney, Business and Public Filings Division

Office of the Secretary of State

Effective date: October 6, 2014

Proposal publication date: August 8, 2014

For further information, please call: (512) 463-5590

#### SUBCHAPTER M. ASSIGNMENT OF MARKS AND RECORDATION OF OTHER INSTRUMENTS

##### 1 TAC §93.131, §93.132

The amendments to §93.131 and §93.132 are adopted under the authority of §2001.001, Texas Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066, Texas Business & Commerce 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 September 16, 2014.

TRD-201404422

Briana Godbey

Attorney, Business and Public Filings Division

Office of the Secretary of State

Effective date: October 6, 2014

Proposal publication date: August 8, 2014

For further information, please call: (512) 463-5590

## TITLE 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 38. TRICHOMONIASIS

##### 4 TAC §§38.1 - 38.3, 38.8

The Texas Animal Health Commission (commission) adopts amendments to §38.1, concerning Definitions, §38.2, concerning General Requirements, §38.3, concerning Infected Herds, and §38.8, concerning Herd Certification Program-Breeding

Bulls, without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4338). The rule text will not be republished.

The purpose of the amendments is to make changes to the Trichomoniasis testing and herd certification requirements.

Bovine Trichomoniasis (Trich) is a venereal disease of cattle caused by the protozoa *Trichomonas foetus*. The organism lives in the folds of the prepuce and internal sheath in bulls, and colonizes the vagina, cervix, uterus and oviducts of cows. It causes abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after prolonged sexual rest or after delivering a full term calf. Bulls over four years old are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts) creating a more favorable environment for Trich.

The Trich control program is an industry driven initiative that was implemented in 2009. The concept includes an annual review by commission staff and interested stakeholder organizations of the program's rules and policies and to subsequently suggest non-binding recommendations to the commission. The Bovine Trich Working Group (TWG) met on April 17, 2014, to evaluate the effectiveness of current rules. The TWG discussed the program overview to date, the management of infected herds, entry requirements, and ultimately discussed the need for possible revisions to the program.

The commission received one comment from a purebred breeder who had experienced difficulty with maintaining a closed purebred herd because neighbor's bulls will get on their property and infect their cattle. They appreciate the effort of the rules, but believe that the rules need to have some teeth. The commission appreciates the comment and believes that the changes to the program to require testing when a bull is separated from its unit of origin, such as when a bull is found on property not owned by the owner or caretaker of the bull, will help to address that concern.

#### STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

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

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

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement

of animals even though the movement of the animals is unrestricted in interstate or international commerce.

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

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

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

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

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 September 19, 2014.

TRD-201404470

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 9, 2014

Proposal publication date: June 6, 2014

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



## CHAPTER 39. SCABIES

### 4 TAC §§39.1 - 39.10

The Texas Animal Health Commission (commission) adopts the repeal of Chapter 39, §§39.1 - 39.10, concerning Scabies, without changes to the proposal as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4343).

Elsewhere in this issue of the *Texas Register*, the commission contemporaneously adopts new Chapter 39, concerning Scabies and Mange Mites, which replaces the repealed chapter in its entirety.

No comments were received regarding adoption of the repeal.

#### STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Texas Government Code §2001.039, which requires a state agency to review their rules.

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 September 19, 2014.

TRD-201404471

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 9, 2014

Proposal publication date: June 6, 2014

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



## CHAPTER 39. SCABIES AND MANGE MITES

### 4 TAC §§39.1 - 39.7

The Texas Animal Health Commission (commission) adopts new Chapter 39, §§39.1 - 39.7, concerning Scabies and Mange Mites, without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4343). The rule text will not be republished.

Elsewhere in this issue of the *Texas Register*, the commission contemporaneously adopts the repeal of the existing Chapter 39, §§39.1 - 39.10, concerning Scabies. The purpose of the new chapter is to make substantial changes to the requirements for treatment of livestock infested with or exposed to scabies or mange mites.

Mange (from Latin: *scabere*, "to scratch") is a contagious condition of the skin caused by a variety of mite species. Scabies or mange may occur in a number of domestic and wild animals; the mites that cause these infestations are of different subspecies and refer to *Chorioptes bovis*, *Psoroptes bovis*, and *Sarcoptes scabiei* mites, which are commonly referred to as chorioptic, psoroptic and sarcoptic mange, mange, mange mites or scabies. Scabies or mange affected animals suffer severe itching and secondary skin infections.

The commission is modifying the title and content of the current chapter to accurately identify that scabies and other contagious skin diseases identified in the new chapter are caused by mange mites and to include new types of acceptable treatment for those mange mites. The new chapter will allow the use of products approved for use on the specific type of scabies or mange mite infestation or exposure under the supervision of the commission, United States Department of Agriculture, Animal Plant Health Inspection Services, Veterinary Services (USDA, APHIS, VS), or an authorized veterinarian. The new chapter also requires that the product be applied according to label directions, unless there is a discrepancy between requirements contained in federal laws or regulations, state laws or regulations, or the product label. Under the new chapter, the most restrictive requirement would

apply unless otherwise authorized by the commission or USDA, APHIS, VS.

No comments were received regarding adoption of the new chapter.

#### STATUTORY AUTHORITY

The new chapter is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

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

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

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

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

Pursuant to §161.056(a), entitled "Animal Identification Program", the commission, in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to by a two-thirds vote adopt rules to provide for an animal identification program more stringent than

a federal program only for control of a specific animal disease or for animal emergency management.

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

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

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.

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

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

TRD-201404472

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 9, 2014

Proposal publication date: June 6, 2014

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



## CHAPTER 45. REPORTABLE DISEASES

### 4 TAC §45.2

The Texas Animal Health Commission (commission) adopts an amendment to §45.2, concerning Duty to Report, without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4346). The rule text will not be republished.

The purpose of the amendment is to add Novel Swine Enteric Coronavirus Disease(s) (SECD) to the list of reportable diseases. Novel Swine Enteric Coronavirus Disease(s) (SECD) is a disease in swine caused by emerging porcine coronaviruses, which includes but is not limited to porcine epidemic diarrhea virus (PEDv) and porcine delta coronavirus (PDCoV). SECD affects swine causing diarrhea, vomiting, and 50-100% mortality of infected piglets. The clinical presentation of SECD infections in growing pigs can be variable in its severity and not readily distinguishable from many other causes of diarrhea in growing pigs. While adult pigs can become infected, mortality is low.

SECD is clinically indistinguishable from transmissible gastroenteritis (TGE), another swine disease caused by a coronavirus that is endemic in the United States.

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

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

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

The commission has also determined after reviewing the rate of morbidity and mortality and the spread of SECD in North America, that requiring a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report SECD, which includes but is not limited to PEDv or PDCoV, is necessary to protect swine health in this state.

No comments were received regarding adoption of the amendment.

### STATUTORY AUTHORITY

The amendment is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code, which is entitled "General Disease and Pest Control". The commission is vested by §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

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

Pursuant to §161.101, entitled "Duty to Report", the commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of a disease other than bluetongue in an animal to the commission within 24 hours after diagnosis if the disease is (1) recognized by the United States Department of Agriculture as a foreign animal disease, (2) is the subject of a cooperative eradication program with the United States Department of Agriculture; (3) is a disease reportable to the Office International Des Epizooties; or (4) is the subject of a state of emergency, as declared by the governor.

Pursuant to §161.101(c), the commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by subsection (a) or (b) if the commission determines that action to be necessary for the protection of animal health in this state. The commission shall immediately deliver a copy of a rule adopted under this subsection to the appropriate legislative oversight committees. A rule adopted by the commission under this subsection expires on the first day after the last day of the first regular legislative session that begins after adoption of the rule unless the rule is continued in effect by act of the legislature.

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

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 September 19, 2014.

TRD-201404473

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 9, 2014

Proposal publication date: June 6, 2014

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



## CHAPTER 51. ENTRY REQUIREMENTS

### 4 TAC §51.8, §51.14

The Texas Animal Health Commission (commission) adopts amendments to §51.8, concerning Cattle, and §51.14, concerning Swine, without changes to the proposed text as published in the June 20, 2014, issue of the *Texas Register* (39 TexReg 4719). The rule text will not be republished.

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

The purpose of the amendments to §51.14 is to establish health assurance for non-commercial swine entering Texas for purposes other than immediate slaughter. In those instances, the amendment will require accredited veterinarians to include a statement on certificates of veterinary inspection that the swine represented on the certificate have not originated from a premises known to be affected by Novel Swine Enteric Coro-

navirus Disease(s) (SECD), and have not been exposed to SECD within the last 30 days.

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

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

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

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

No comments were received regarding adoption of the amendments.

### STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

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

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

or livestock industry through insect infestation or through a communicable or noncommunicable disease.

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

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

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

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

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

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 September 19, 2014.

TRD-201404474

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 9, 2014

Proposal publication date: June 20, 2014

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



## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

## CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas (Commission) adopts amendments to §8.1, relating to General Applicability and Standards, to update federal provisions and citations, and to §8.215, relating to Odorization of Gas, to clarify an exemption for certain farm tap odorizers. The Commission adopts the amendments without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5024).

The Commission received one comment from an individual regarding the proposed amendments. The commenter stated that the way he read and understood the amendment it would "exempt the maintenance requirements of the wick type farm taps (odorizers) on operators, thereby placing the ownership of maintenance and upkeep on the end user."

The Commission disagrees with this comment, which is a misapprehension of the plain meaning of the language change and the explanation in the proposal preamble. The proposal sought no change to anything other than the wording of the exemption itself.

Operators are currently complying with the full requirements of 49 CFR §192.625, and will continue to be required to do so. The Commission proposed to correct an *apparent* discrepancy between this regulation and the current wording of §8.215, which *seems* to permit operators to exempt farm tap odorizers from the odorization testing requirements. This rule has never been enforced in this manner; however, the wording appears to allow it.

To bring the wording of the Commission's rule into alignment with the requirements of 49 CFR §192.625, the Commission proposed to narrow the exemption to *only* wick-type farm tap odorizers, and to exempt wick-type farm tap odorizers *only* from the requirement to report the make, model, and serial number of the wick-type farm tap odorizer. This information would be impossible for an operator to report in any event, because a wick-type odorizer is not a meter; it is a bottle with a fabric wick in it.

Regardless of the type of odorizer, each operator has been and will continue to be required to conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. This has been a requirement since the regulations were adopted in 1970, and this is the standard that the Commission has adopted and currently enforces through its own rule, §8.215.

In §8.215(e) as adopted, operators have been and will continue to be required to do the following: (1) conduct concentration tests on the gas supplied through its facilities and required to be odorized; (2) ensure that the test points are sufficiently distant from odorizing equipment, so as to be representative of the odorized gas in the system; (3) perform the concentration tests at intervals not exceeding 15 months, but at least once each calendar year or at such other times as the Pipeline Safety Division may reasonably require; (4) record and retain the results of these tests in each company's files for at least two years; and (5) ensure that malodorant concentration test results include the odorizer name and location, the malodorant concentration meter make, model, and serial number, the date test performed, test time, odorizer tested, and distance from odorizer, the test results indicating the percent gas in air when malodor is readily detectable; and the signature of person performing the test.

For wick-type farm tap odorizers, the *only* thing an operator is not required to do is to report is the make, model, and serial number of the device.

In addition, the Commission is well aware of the hazards of unodorized gas mentioned by the commenter in a reference to the New London School tragedy in March 1937. This event spurred the Texas Legislature to enact and the Commission to begin enforcing in July 1937 one of the first pipeline safety regulations in the United States: the requirement to odorize gas.

The commenter stated "One of the biggest problems with farm taps is the undocumented or mapping of lines connected to the operators transmission lines in the field."

The Commission recognizes that there are myriad service configurations related to farm tap distribution service. Many farm tap service lines are customer-owned and are not within the control of the operator. That means that excavators who call for a line locate will not be given information about service line location because these service lines are not the property of the operators.

While an operator may be aware of additional service locations and may attempt to notify users of the hazards of unodorized gas, that may not always be the case, and most operators welcome that information from property owners and/or customers who become aware of such situations. Because farm tap service is distribution service, there is no Commission requirement to map such lines. In any event, the Commission has no authority to regulate routing or siting of any pipeline, other than to require compliance with the design and construction requirements in the regulations.

The commenter also stated: "With all of the inherent hazards associated with farm taps and with the maintenance requirements being placed on the end user I feel that this hazard will significantly multiply if not regulated/standardized. One way to reduce this hazard is to standardize farm taps and regulate all service/transmission lines detailing the specifications (material used to construct these lines) of these lines. This requirement would also mandate the mapping of these lines, and also require these lines to be registered with the one call system."

The Commission notes that transmission lines serving farm tap customers are already regulated. To the extent that an operator owns the farm tap service line, there are materials, design, and construction standards that are already applicable, as are the one-call requirements. However, because these are distribution facilities, the operator may map them for its own purposes, but the Commission's mapping requirements do not apply to them. To the extent that these service lines are owned by customers, the Commission is without authority to extend pipeline safety regulation to them; that would have to be accomplished by statutory amendment.

The commenter stated that by imposing regulations that address not only the wick type odorizers but also regulate all the components of the system "we would be able to significantly reduce the exposure of this hazard."

The Commission has not proposed amendments other than to refine, narrow, and align the exemption stated in §8.215(e)(2) and therefore may not adopt such changes in this rulemaking proceeding.

The Commission adopts the amendments in §8.1(b) to update the minimum safety standards by adopting by reference the United States Department of Transportation's (USDOT) pipeline safety standards found in 49 U.S.C. §§60101, *et seq.*; 49

Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §§60101, *et seq.*; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; 49 CFR Part 199, Drug and Alcohol Testing; and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. The adopted amendment changes the date of the Commission's adoption of the federal pipeline safety standards to the effective date of this section.

The most significant change in the federal pipeline regulations since October 1, 2011, updated the administrative civil penalty maximums for violation of the safety standards to reflect current federal law; updated the informal hearing and adjudication process for pipeline enforcement matters to reflect current law; and made other technical corrections and updates to certain administrative procedures. The amendments did not impose any new operating, maintenance, or other substantive requirements on pipeline owners or operators, and became effective October 25, 2013. By amending the text of §8.1 to provide that the Commission adopts all federal pipeline safety regulations adopted by reference in this section as of the effective date of the section, the Commission ensures that all amendments and corrections to the federal rules have been incorporated into the Commission's rules, as required by State Program Guidelines.

The adopted amendments to §8.215(e)(2) clarify the exemption for reporting certain information about certain types of farm tap odorizers. Currently, and consistent with the federal requirements for gas odorization set forth in 49 CFR §192.625, the Commission requires each gas company to conduct odorant concentration tests according to the requirements in the rule, and to record and maintain certain information regarding the tests in its files for at least two years. The reports must include the odorizer name and location; the malodorant concentration meter make, model, and serial number; the date the test was performed, test time, odorizer tested, and distance from odorizer; the test results indicating the percent of gas in air when the malodor was readily detectable; and the signature of the person performing the test. The provision in subsection (e)(2) appeared to exempt farm tap odorizers from the odorization testing requirements of paragraph (1) of this subsection. Such an exemption would not be consistent with the requirements of §192.625.

Historically, operators were not required to perform the testing of farm tap odorizers that is now required in §8.215(e)(1). Farm taps were assigned an odorizer ID number and the homeowner or operator was required to fill out certain forms for each farm tap and submit them to the Commission on a quarterly basis. Approximately ten years ago, the Commission moved the pipeline safety rules from Chapter 7 of the Texas Administrative Code, Title 16, to Chapter 8, simultaneously making a number of clarifying organizational changes. The intent of subsection (e)(2) at that time was to remove the requirement for odorizers to have ID numbers and to eliminate the requirement that odorizer equipment reports be performed on wick-type odorizers.

Typically, a wick-type odorizer is a small steel bottle, containing only a pint to a quart of odorant, and installed on the service line adjacent to the meter. Similar to those used in a kerosene lantern, one end of the wick extends through a hole in the container while the other end is placed directly in the stream of gas.

The odorant is drawn up the wick from the container into the gas stream. There is no manufactured equipment and therefore no malodorant concentration meter make, model, and serial number to report.

When the rules were previously amended, there was no intent to remove the requirement that operators test for adequate odorization; the Commission has continued to require operators to conduct those tests. The intent was to exempt wick-type odorizers from the equipment reporting requirements. The adopted amendment expressly states the limit of the exemption.

## SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

### 16 TAC §8.1

The Commission adopts the amendments under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001 - 117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, *et seq.*; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Texas Natural Resources Code, §§81.051, 81.052, and 117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.211; 121.251 and 121.253, 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq.*, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.211; 121.251 and 121.253, 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on September 16, 2014.

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 September 16, 2014.

TRD-201404416

Cristina Martinez Self  
Rules Attorney, Office of General Counsel  
Railroad Commission of Texas

Effective date: October 6, 2014

Proposal publication date: July 4, 2014

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



## SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

### 16 TAC §8.215

The Commission adopts the amendments under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001 - 117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, *et seq.*; and Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Texas Natural Resources Code, §§81.051, 81.052, and 117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.211; 121.251 and 121.253, 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq.*, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.211; 121.251 and 121.253, 121.5005 - 121.507; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on September 16, 2014.

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 September 16, 2014.

TRD-201404417

Cristina Martinez Self  
Rules Attorney, Office of General Counsel  
Railroad Commission of Texas

Effective date: October 6, 2014

Proposal publication date: July 4, 2014

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



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## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

##### SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

###### 22 TAC §501.90

The Texas State Board of Public Accountancy adopts an amendment to §501.90, concerning Discreditable Acts, with changes to the text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4382). The rule will be republished.

The amendment will add additional state, federal and other regulatory bodies to the list of agencies whose disciplinary action against a licensee would be considered a discreditable act warranting Board action.

Thirteen comments were received regarding adoption of the amendment. The first two letters containing comments were received following the publication of the proposed rule amendment in the June 6, 2014, issue of the *Texas Register*.

Comment: One commenter expressed concern that the rule does not identify all state, federal and other regulatory bodies whose disciplinary action would be considered a discreditable act. The commenter is concerned that without specifically identifying every agency there will be agencies that the "licensee may never have knowledge of."

Response: The Board disagrees with the comment. The commenter is reasoning that the licensee should not be held accountable for laws and regulations for which they have no knowledge. Licensees and the public in general, however, have a responsibility to know the law. Ignorance of the law is no defense to a violation of the law and the proposed Board rule revision will assist licensees by identifying a large number of governmental agencies that might regulate the licensee.

It might be helpful to point out that the Public Accountancy Act, Chapter 901 of the Texas Occupations Code (Act), in §901.502, already permits disciplinary action by the Board which results from an action by a state or federal agency. In addition, Board Rule 501.91 already permits disciplinary action by the Board for acts or activities in the course and scope of the practice of public accountancy or a fiduciary. Current law and regulations do not specifically identify the regulatory authorities other than in the general sense. The proposed Board rule revision will provide greater clarity of the licensee's responsibility than what already exists.

Comment: Commenter expressed concern that since so many potential agencies would be added to the existing list commenter believed that there would be a financial impact to both state and local governments including the educational requirements to stay abreast of the potential infractions.

Response: The Board disagrees with the comment. Licensees are already required to comply with all state, federal and local laws. This proposed rule revision has no effect on a licensee's

existing responsibility to comply with the laws of state, federal, local governments or any other regulatory authorities.

Comment: Commenter expressed concern that the proposed rule expands the Board's disciplinary authority to actions by licensees "for an infraction that may have nothing to do with accounting work." Commenter suggests that the Board states that there will be no probable economic costs to licensees required to comply with the amendment when in fact licensees will want to educate themselves to an agency's ethics and that the costs of the additional education regarding activities not associated with accounting work will be passed onto the client.

Response: The Board disagrees with the comment. The Board is not restricted to only taking disciplinary action against a licensee for an act occurring in the practice of "accounting work." The Board may under existing law take disciplinary action against a licensee for criminal offenses not associated with the practice of accounting work. This proposed rule revision has no effect on a licensee's existing responsibility to comply with the laws of state, federal, local governments or any other regulatory authorities.

Comment: Commenter expressed concern that the proposed rule will have an adverse economic effect on small businesses. Commenter stated that the notice published in the *Texas Register* of the proposed rule amendment states: "There will be no probable economic costs to persons required to comply with the amendment and a Local Impact Statement is not required because the proposed amendment will not affect a local economy."

Based upon that statement commenter states "This certainly looks like someone has the "requirement" process in mind, and that means "someone" wants to impose something." (Sic).

Response: The commenter is misinterpreting the statement referenced. The Board believes the language is clear and that there will be no economic impact on small businesses. The commenter focusing on one statement and segregating it from the whole notice in the *Texas Register* may be contributing to the commenter's misinterpretation. This proposed rule revision has no effect on a licensee's existing responsibility to comply with the laws of state, federal, local governments or any other regulatory authorities.

Comment: The same commenter expressed concern that the Board is inviting comments from the public on the issues of whether or not the proposed amendment will have an adverse effect on small businesses. The commenter believes that the Board should conduct the economic impact statement and not attempt to transfer that responsibility to the public.

Response: Section 2006.002 of the Government Code requires a state agency considering the adoption of a rule that may have an adverse economic effect on small businesses to prepare an economic impact statement that estimates the number of small businesses subject to the proposed rule, projects the economic impact of the rule on those small businesses and describes alternative methods of achieving the purpose of the proposed rule and a regulatory flexibility analysis that includes the agency's consideration of alternative method of achieving the purpose of the proposed rule.

The Executive Director has determined that there will be no effect on small businesses by the adoption of this rule and therefore there is no need to prepare an economic impact statement or regulatory flexibility analysis. If on the other hand the public has information that it believes demonstrates that there will

be an economic impact caused by the adoption of the proposed rule amendment, then the Board invites the public to provide information and the Board will consider it.

Comment: A second commenter expressed the concern that a state agency should not be imposing a penalty on a licensee based upon a finding of wrongdoing by another jurisdiction. Doing so would be doubling the penalty for the same offense and removing the person's right to earn a living without due process of law.

Response: The Board disagrees with the comment. If someone is adjudicated for a civil or criminal offense, the Board has the responsibility to protect the public from individuals that might do harm to the public through their public accountancy practice. It may be appropriate for the Board to prevent a person convicted of fraud or embezzlement from having access to public or private funds.

In addition, it is not correct to suggest that the Board would take action against a licensee without providing the licensee due process of law. Licensees have always been afforded the opportunity of a fair investigation and an adjudicatory hearing before an Administrative Law Judge of the State Office of Administrative Hearings. Those hearings are conducted under the Rules of Evidence as applied in the state district courts in this state in non-jury proceedings. There has never been an instance or any evidence of the Board not providing due process of law and the proposed rule revision will not affect the current Board process.

Comment: The second commenter also expressed concern that the proposed rule will increase costs to state or local governments. The commenter suggested that there have been costs to the state associated with the staff drafting the rule revision. The commenter also suggested that there would be costs incurred by other governmental agencies as a result of the other agencies notifying the Board of their disciplinary actions. The commenter also suggested that if the other governmental authorities do not notify the Board, then the Board would incur additional costs in spending time attempting to identify disciplinary actions.

Response: The Board does not agree with the comment. Section 2001.024 of the Administrative Procedure Act (APA) requires a state agency to estimate any additional costs to state and local governments as a result of "enforcing or administering" the proposed rule. The second commenter cites the staff time spent in drafting the rule. The actual staff time spent has been nominal, is a one-time expense and is not an expense incurred in "enforcing or administering" the rule which is the criteria required to be examined by §2001.024 of the APA.

With regard to the time spent by other agencies reporting their disciplinary actions or in the alternative, the Board staff searching for disciplinary actions, there will be no affect as a result of the proposed rule revision. The rule does not require other agencies to report disciplinary actions to this agency nor does it require the staff of the Board to change its process. There will be no change in what is currently occurring and therefore no additional costs to the state or other agencies as a result of this rule revision.

The following comments were received after the Board extended the comment period an additional 30 days. The first commenter represents that he is commenting on behalf of the Texas Society of CPAs.

Comment: The first commenter states that the organization supports the concept of the proposed revision and agrees that it is a good idea to make the existing practice explicit and to name

the most common entities before which license holders regularly practice.

Commenter also states that it appears that the intent of the rule is to apply to potential ethics violations of licensees as the last sentence in the proposed rule amendment reads "a conviction or final finding of unethical conduct." Commenter notes however that the first sentence refers to "discipline" which could be interpreted to be broader than just ethics violations. Commenter therefore suggests revising the first sentence of the proposed rule revision to read:

*(8) a conviction or final finding of unethical conduct by state or federal agencies or boards, local governments or commission for violations of laws or rules on ethics by licensees that engage in activities regulated by those entities...*

Response: The staff is in agreement with the comment and recommends adding the language suggested to help clarify the intent of the proposed rule amendment.

Staff also believes that clarification of the extent of the application of discipline and unethical conduct by state or federal agencies would help license holders better understand the circumstances that could cause the Board to take disciplinary action. The staff is recommending the following interpretive comment be added to the proposed rule:

*Interpretive comment: A conviction or final finding of unethical conduct by a competent authority, for the purpose of paragraph (8) of this section, includes any right to practice before the authority or limits the scope of the permit or license conveyed by the authority. Conviction relates to the finding in a criminal proceeding and final finding relates to a determination in a non-criminal proceeding. Unethical conduct or activities is determined by the governmental entity making the determination of a conviction or final finding.*

Comment: Commenter also suggests eliminating the language in the proposal that a finding by another regulatory authority is *prima facie* evidence of a violation of Board rules. Commenter suggests avoiding any real or implied lack of due process.

Response: Even though the license holder has already been provided through the complaint process the opportunity to dispute the allegation represented by the other agency's finding, the staff believes it would serve the public interest to provide license holders with every reasonable opportunity to demonstrate a prior finding to be unfair. It is the practice of this agency to thoroughly investigate a case on its merits thus making a finding of *prima facie* evidence of a violation unnecessary. The staff therefore recommends the suggestion to revise the proposal to eliminate a finding of another agency as *prima facie* evidence of a rule violation.

Comment: Commenter also suggests that the rule not list the Texas State Bar as one of the agencies whose finding of misconduct would be considered a discreditable act by the Board. Commenter expressed the belief that the Board should not relinquish its authority over licensees to the state bar especially in the determination of whether the licensee is practicing accounting or not.

Response: The Texas State Bar Association is not a state agency contemplated by §901.502(8) of the Act and therefore agrees that it should not be included in the list of federal or state agencies. The staff recommends removing the Texas State Bar Association from the listed agencies.

In addition, the staff notes that the Board has never taken disciplinary action against a license holder based upon the actions of the National Association of Security Dealers or the Financial Industry Regulatory Authority. For purposes of clarification to license holders, the staff is also recommending the deletion of these two entities from the entities listed in the proposed rule revision.

The following comments are from individuals that are identified as members of the Texas Association of CPAs.

Comment: A second commenter expressed concern that license holders would be subject to discipline by the Board for violating the ethical standards of other state and federal agencies with regulatory authority over the license holder. Commenter believes doing so would be an expansion of the Board's current authority.

Response: The proposed rule amendment does not propose any new disciplinary authority that does not already exist or discipline that has not already been occurring. The Act authorizes the Board to discipline: 1) a license holder for an action by a state or federal agency that limits the license holder's right to practice before that state or federal agency [§901.502(9)]; or 2) for conduct indicating a lack of fitness to serve the public as a professional accountant [§901.502(11)]; or 3) for fraud, dishonesty or gross negligence in the performance of services as a license holder [§901.502(2)]; or 4) for a final conviction of or the imposition of deferred adjudication for a felony or for fraud or dishonesty [§901.502(10)]; and 5) for a revocation, cancellation, placement on probation, limitation on the scope of practice or suspension by another state, or a refusal of renewal by another state, of the authority issued by that state to the person, or to the person's partner, member, or shareholder, to engage in the practice of public accountancy [§901.502(8)].

The proposed rule revision does not propose new authority. If the proposed rule were not adopted there would be no change to current Board disciplinary practices regarding the Board's authority to discipline.

Comment: Commenter suggests that the language in the proposed rule concerning "a violation of laws or rules on ethics by licensees" is too vague and should be restricted to only those services a licensee performs in the normal course of professional services such as projections, management reports or attest services.

Response: Pursuant to the Act, the Board has the responsibility to administer the disciplinary provisions expressed in the Act and the Board would not be following the intent of the Act to restrict discipline to only those services a license holder performs in the normal course of professional services. For example, if the Internal Revenue Service (IRS) revokes or suspends the right of a license holder to practice before that agency, §901.502(9) of the Act applies and the Board has a responsibility to investigate and determine if disciplinary action is warranted. Restricting disciplinary action to those services a licensee performs as a projection, management report or attest service would overlook the IRS disciplinary action.

What the commenter regards as vague is addressed by the proposed addition of the interpretive comment in response to the first commenter discussed above that addresses the meaning of conviction and final finding of unethical conduct.

Comment: Commenter also suggests that the Board consider the use of the American Institute of Certified Public Accountants (AICPA) Standard 501-5 as the basis for disciplinary action.

Standard 501-5 is exclusively a practice standard for the preparation of financial statements or similar services for a member of that professional trade association.

Response: The Board is not able to limit its disciplinary activities to financial practice standards. The Texas Legislature directed the Board to take on these other responsibilities through its enactment of §901.502 of the Act.

Comment: Third commenter expressed concern that the proposed rule revision will permit the staff to bring charges against any licensee for any action taken under any law or rule of any government agency or committee. Commenter further suggests that charges brought against a license holder should be limited to conduct in the practice of public accountancy.

Response: The concerns expressed are very similar to the concerns discussed in the immediately preceding comment letter. As discussed in greater detail in the preceding response, the proposed amendment does not propose any new authority to the Board. In addition, the Board may not limit its disciplinary authority to only acts that occur in the practice of public accountancy.

The commenter's concern that the proposed amendment would permit the *staff* (emphasis added) of the Board to bring charges against a license holder may evidence the license holder's unfamiliarity with the Board's investigatory process. The Enforcement staff's responsibility is to gather complaint information to be presented to the assigned enforcement committee for its review. It is the enforcement committee, composed primarily of seven or eight duly appointed and experienced CPAs, that thoroughly examines each and every complaint. It is the enforcement committee members that possess the expertise, experience and judgment that best understand accounting principles and makes the determination as to whether or not disciplinary action is warranted. The complaint process is not staff driven but is directed by the enforcement committees.

Comment: A fourth commenter stated that §901.502(10) of the Act restricts the Board to taking action against a licensee who has violated a law of a state or the United States only if the licensee is convicted or is subject to deferred adjudication for offenses that are a felony or includes fraud or dishonesty. The commenter states that the Board is attempting to exceed its authority when it attempts to discipline a licensee for violating another governmental agency's laws.

Response: Staff disagrees. Commenter has overlooked the paragraph immediately preceding the cite to §901.502(10). Section 901.502(9) of the Act authorizes the Board to take disciplinary action against a licensee for a revocation, suspension or voluntary consent decree concerning the right to practice before a state or federal agency for a reason the Board determines warrants its action. The Board's disciplinary authority is not limited to a felony or an act of fraud or dishonesty.

Commenter has also overlooked the paragraph immediately following §901.502(10). Section 901.502(11) authorizes the Board to take disciplinary action for conduct indicating a lack of fitness to serve the public as a professional accountant. Existing Board Rule 519.7 specifically lists more than 80 misdemeanor offenses that the Board has determined involve integrity, morality and honesty that directly relate to the duties and responsibilities involved in providing professional accounting services to the public. In addition, if commenter's position were correct and §901.502(10) is the Board's controlling authority to disci-

pline, then the Board would be precluded from disciplining a licensee for the non-felony offenses of burglary, prostitution or driving while intoxicated, to name only a few.

Commenter has also overlooked §901.502(2) which provides that a person may be disciplined for fraud, dishonesty or gross negligence in the performance of services as a license holder. The practice of public accountancy is a profession and not a vocation. The profession is expected to be held to a higher standard by both the public and the Act and both the public and license holders benefit from that higher standard.

Staff notes that two of the entities listed in the proposed rule amendment are the National Association of Security Dealers and the Financial Industry Regulatory Authority. The Board has never taken disciplinary action against a license holder based upon the actions of those entities. For purposes of clarification, and as discussed in the response to the first commenter, the staff is recommending the deletion of those two entities from the entities listed in the proposed rule revision.

Comment: Commenter states that the terms "discipline," "activities," and "unethical" are not specifically defined and the terms therefore do not provide fair notice of improper conduct. Commenter states that there is no restriction and references AICPA Standard 501-5 which limits discreditable acts to AICPA members not following the established requirements of governmental bodies in the preparation of financial statements or while performing attest services subject to the jurisdiction of the governmental bodies.

Response: Staff does not agree that the Board's disciplinary authority is limited nor should be limited to the requirements pertaining to the preparation of financial statements and performing attest services. The AICPA is not a licensing or regulatory authority and does not have the same purposes and responsibilities as the Board. Staff does not believe that AICPA Standard 501-5 is applicable to a regulatory authority's legislative directives and responsibilities.

In addition please see the response to first commenter's comment and the staff's recommendation to provide an interpretive comment to help clarify the scope of the rule.

Comment: Commenter stated that on no more authority than a final finding of an agency's ethical rules have been violated that the Board seeks to assume that a license holder has violated its prohibition against discreditable acts. Commenter makes this statement as a result of the proposed rule's language that makes a conviction or a final finding of unethical conduct by a competent authority to be prima facie evidence of a violation.

Response: It is not correct for commenter to characterize the Board's complaint investigations as simply a determination based solely on another agency's finding of a violation of rule or law. The facts and evidence in all Board complaint investigations are extensively examined by Board staff attorneys and Board committees that review all of the facts and allegations associated with the complaint. It is only after that extensive review by staff and the license holder's peers, and the license holder's opportunity to submit evidence on his behalf to an enforcement committee that a determination is made that a cause for disciplinary action is warranted.

As stated earlier in response to the suggestion made by the first commenter, the staff does recommend revising the proposed rule to eliminate a finding of another agency as prima facie evi-

dence of a violation. It is the practice of this agency to investigate a case on its merits making this language unnecessary.

Comment: A fifth commenter expressed concern that the Board would take disciplinary action against a license holder under circumstances where the license holder only accepted an agreement of guilt or a finding of misconduct because it was less expensive than challenging the allegations or the discipline was the result of an unfair "political wind."

Response: The Board examines every complaint on its own merits. There is a committee of the license holder's peers that extensively reviews each allegation in a complaint investigation. When a license holder has received a discipline from another governmental entity the license holder has the opportunity to explain to the enforcement committee all the circumstances surrounding the discipline. There have been instances where the enforcement committees have recommended dismissal of a complaint investigation because the enforcement committee, and the Board agreed, extenuating circumstances warranted the dismissal after hearing the license holder's explanation.

Comment: Commenter suggested that the proposed rule would be an opportunity for the Board to charge administrative costs as a "back door fee."

Response: A number of years ago, the Board voluntarily chose to transfer its administrative penalties it receives to the Fifth-Year Accounting Students Scholarship Fund. Ever since then administrative penalties have not inured to the benefit of the Board. In addition administrative costs, which the commenter is referencing, by their very nature are an offset of the agency's expenses. The so called "back door fee" the commenter is concerned with cannot occur because there is no financial benefit to the Board to be reimbursed for its costs.

Comment: A sixth commenter expressed concern that the proposed revision to Board Rule 501.90 is too vague and too broad and that the Board's authority to discipline license holders is limited to felony convictions. Commenter stated that the rule as currently written could cause a license holder to be suspended for a speeding ticket or other misdemeanor.

Response: The Board's disciplinary authority, pursuant to §901.502 of the Act, is not limited to felony convictions. Section 901.502 of the Act addresses a number of other circumstances that could warrant disciplinary action by the Board. Staff does not agree with commenter's conclusion but is proposing the addition of an interpretative comment in the proposed rule amendment that will clarify that for purposes of §501.90(8), a conviction or final finding includes any right to practice before the authority or that limits the scope of the permit or license conveyed by the authority.

Comment: A seventh commenter expressed concern that the proposed amendment is overly broad and vague and that "discipline," "activities," and "final finding" are not defined. Commenter further states that the Board already has sufficient power to take disciplinary action against CPAs that commit discreditable acts.

Response: The proposed rule revision does not propose new authority. If the proposed rule were adopted there would be no change to current Board disciplinary practices regarding the Board's authority to discipline.

In addition, staff is proposing the addition of an interpretative comment in the proposed rule amendment that will clarify that for purposes of §501.90(8) a conviction or final finding includes any right to practice before the authority or that limits the scope

of the permit or license conveyed by the authority. The proposed interpretive comment should address the commenter's concern regarding vagueness.

Comment: An eighth commenter stated that the proposed amendment should not be passed unless the Board lists each and every agency whose disciplinary action could be considered a discreditable act by the Board. Commenter expressed concern that a CPA should not be subject to more than one penalty for the same act and expressed the belief that the proposed rule amendment would deny license holders due process of law.

Commenter suggests that more staff members will have to be added as a result of the proposed rule amendment. Commenter suggests that there is a cost to have the staff read and write the rules plus the cost to other governmental agencies to notify the Board of the sanctions and if the other Boards and agencies do not notify the Board, then the Board staff will spend time looking for the violations.

Response: As discussed in previous comments, the proposed rule revision does not propose new authority. If the proposed rule were adopted there would be no change to current Board disciplinary practices regarding the Board's authority to discipline and no additional staff would be needed to administer the rule. Also, as previously discussed in response to the first commenter, the staff is proposing the addition of an interpretative comment in the proposed rule amendment that will clarify that for purposes of §501.90(8), a conviction or final finding includes any right to practice before the authority or that limits the scope of the permit or license conveyed by the authority. The proposed interpretive comment should address the commenter's concern regarding vagueness.

Comment: Commenter expresses concern that the Board should not be able to take disciplinary action against a licensee when another agency has already taken action for the law violation. Commenter states that the Board's action on top of the other action doubles the penalty. Commenter also expresses concern that the Board's motive in doing so is to extract fines, fees and penalties and is done without due process of law.

Response: Commenter's concern that a license holder should not be disciplined twice would mean that a license holder criminally convicted of fraud in the trading of securities and barred by the Securities and Exchange Commission from practicing before the agency could continue practicing in Texas as a CPA. Staff does not believe that would be in the public interest or in accordance with legislative mandate.

Commenter's concern that the Board's motive to disciplining a license holder that has already been disciplined by another state or federal agency is to extract fees and penalties overlooks the fact that administrative penalties go to the state's General Fund and do not financially benefit the Board.

Commenter does not explain how the license holder is denied due process of law however every license holder has the opportunity to respond to an allegation of wrongdoing before a Board committee of the license holders' peers. Any finding of wrongdoing by the committee can be appealed to an Administrative Law Judge (ALJ) of the State Office of Administrative Hearings. The hearings conducted by the ALJ are in accordance with the procedures outlined in the Administrative Procedure Act and the rules of evidence as applied in state District Courts in non-jury hearings. No license holder is denied due process of law.

Comment: A ninth commenter expressed concern that the proposed amendment is too vague and too broad. Commenter is concerned that a license holder could be suspended for a speeding ticket or other misdemeanor.

Response: There is no provision in any Board rule that would permit disciplinary action against a license holder for a misdemeanor speeding ticket.

As previously discussed, the staff is proposing language that clarifies that the proposed rule concerns only a disciplinary action that restricts the person's right to practice before a state or federal agency.

Comment: A tenth commenter related that he had a bad experience with the IRS National Office of Professional Responsibility that resulted in him receiving a reprimand that was not warranted. He expressed concern that the proposed rule revision could cause a similar action by the Board for the same event.

Response: As discussed in prior comments, if the proposed rule were adopted there would be no change to current Board disciplinary practices. In addition the interpretative comment in the proposed rule amendment should help to clarify that the proposal only applies to a sanction that includes the right to practice before the authority or that limits the scope of the permit or license conveyed by the authority. A reprimand does not.

It should also be assuring to understand that the Board does not automatically impose a sanction because another governmental entity has done so. A license holder has the opportunity, in the Board's investigatory process, to explain why the sanction from another governmental entity was not warranted. Most of the individuals reviewing the license holder's explanation are other CPAs with commensurate education and experience that take their responsibility to thoroughly and fairly investigate these matters very seriously.

Comment: An eleventh commenter expressed the concern that the proposed rule amendment is overly broad and subjects license holders to an infinite number of potential violations of which they have no knowledge. Commenter uses the example of an individual receiving a fine for inadvertently watering a lawn on an unpermitted day and such fine could subject the license holder to disciplinary action by the Board.

Response: The proposed revision to the Board rule does not provide the Board any greater authority to discipline a license holder than currently exists. However, the interpretive comment helps to clarify that the only sanction Board Rule 501.90(8) addresses is a sanction that affects the right of the license holder to practice before a governmental entity. The example that the commenter uses would therefore not be applicable and should address the concern.

#### Summary of Comments

Comment received from the Texas Society of Certified Public Accountants (TSCPA)

The TSCPA supports the proposed rule amendment but suggested clarification for the trigger that could result in a disciplinary action. The TSCPA also suggested the elimination of the proposed provision that would allow a discipline by another state or federal agency to be accepted as prima facie evidence of a violation of Board rules. The TSCPA also suggested that the rule not list the Texas State Bar as one of the state or federal agencies included in the rule.

The Board agreed with all of the TSCPA's comments.

Comment received from the Texas Association of Certified Public Accountants ("TACPA"):

The TACPA is against the adoption of the Texas State Board of Public Accountancy's ("Board") proposed Rule 501.90(8) because the TACPA believes proposed Rule 501.90(8):

- (1) is outside the Board's authority to enact;
- (2) amendment expands the Board's disciplinary powers by adding new acts the Board could consider as Discreditable Acts;
- (3) shifts to the licensee the burden of proof in a contested matter and restricts their activities without statutory authorization;
- (4) fails to provide fair notice of proscribed activities; and,
- (5) is impermissibly vague and indefinite.

#### Reasoned Justification

The Board's proposed rule change seeks to comply with its Legislative mandate to ensure the highest integrity and moral character of its licensees and to investigate and prosecute the disciplinary actions of similar federal and state regulating entities, including those in other states. The Board seeks to do this by identifying entities whose final disciplinary measures are recognized by the Board as constituting a discreditable act under the Board's rules. The entities' functions have similarities with the Board's.

The Board, as a Texas State Agency, has the powers expressly conferred upon it by the Texas Legislature including whatever powers are reasonably necessary to fulfill its express functions or duties. *Public Utility Com'n of Texas v. City Public Service Bd. Of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001); See Also, *GTE-Southwest*, 901 S.W.2d at 407 (quoting *Kawasaki Motors v. Motor Vehicle Com'n*, 855 S.W.2d 792, 797 (Tex.App.--Austin 1993, no writ)). Further, the Board's interpretation of its own powers is considered if that interpretation is reasonable and is consistent with the statute. *Public Utility Com'n of Texas v. City Public Service Bd. Of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001); See also, *Tarrant Appraisal Dist. v. Moore*, 845 S.W.2d 820, 823 (Tex.1993). Therefore, the first issue to be addressed in determining whether the Board's proposed rule is valid is whether the Texas Legislature expressly gave the Board the power to include the list of agencies whose disciplinary action against a licensee would be considered a discreditable act in the Texas Accountancy Act ("Act"); If not, we must then ask whether that power is reasonably necessary for the Board to fulfill the express functions and duties the Legislature did give it. *Id.* Here, the Board has both the express power to identify the agencies; and, that power is reasonably necessary for the Board to fulfill its express function to ensure the highest integrity, ability and moral character of its licensees.

The proposed rule includes a conviction, or a final finding of unethical conduct, by state, federal agency, board, local government or commission for violation of laws or rules on ethics. There is no enlargement of the Board's disciplinary authority under the Act. The Board is not including any provision in the proposed rule amendment that expands the Board's authority. It merely identifies some of the state and federal agencies that the Texas Public Accountancy Act contemplated in §901.502. The Texas Legislature has expressly given the Board broad discretion in disciplining its licensees based upon the final findings and convictions of other entities of ethics violations related to the licensee's practice in §§901.005, 901.156, 901.502, and 901.511 of the Texas Occupations Code.

The Board's proposed rule change is also pursuant to the express requirements and powers granted the Board by the Legislature in §§901.005, 901.156, and 901.511 of the Act. The Legislature requires the Board to ensure that all of its licensees: "demonstrate competence and integrity in all dealings with the public that rely on or imply the special skills of a certified public accountant and not merely in connection with the performance of the attest service;" The Act also requires the Board to adopt rules of professional conduct to: (1) establish and maintain high standards of competence and integrity in the practice of public accountancy; and, (2) ensure that the conduct and competitive practices of license holders serve the purposes of this chapter and the best interest of the public. The Act also states that: "A license holder of this state who offers to perform or performs professional accounting services or who uses the license holder's title as a certified public accountant in another state or jurisdiction is subject to disciplinary action in this state for an act committed in the other state or jurisdiction for which the license holder would be subject to discipline as a license holder of the other state or jurisdiction." Therefore the Board proposes to amend its rule to more effectively effectuate its Legislative mandate to maintain the integrity of its licensees by making sure that it investigates and considers the findings of similar agencies in other jurisdictions and states relating to the ethics and abilities of its licensees and to assist licensees by identifying some of the agencies that may regulate them.

The amendment is adopted under the Act, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

#### §501.90. *Discreditable Acts.*

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

- (1) fraud or deceit in obtaining a certificate as a CPA or in obtaining registration under the Act or in obtaining a license to practice public accounting;
- (2) dishonesty, fraud or gross negligence in the practice of public accountancy;
- (3) violation of any of the provisions of Subchapter J or §901.458 of the Act (relating to Loss of Independence) applicable to a person certified or registered by the board;
- (4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;
- (5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm;
- (6) cancellation, revocation, suspension or refusal to renew authority to practice as a CPA or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;
- (7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or

licensing body for a cause which in the opinion of the board warrants its action;

(8) a conviction or final finding of unethical conduct by state or federal agencies or boards, local governments or commissions for violations of laws or rules on ethics by licensees that engage in activities regulated by those entities including but not limited to: the Public Company Accounting Oversight Board, Internal Revenue Service, U.S. Securities and Exchange Commission, U.S. Department of Labor, U.S. General Accounting Office, U.S. Housing and Urban Development, Texas State Auditor, Texas State Treasurer, Texas Securities Board, Texas Department of Insurance, and the Texas Secretary of State;

(9) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(10) fiscal dishonesty or breach of fiduciary responsibility of any type;

(11) failure to comply with a final order of any state or federal court;

(12) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(13) intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;

(14) giving intentional false sworn testimony or perjury in court or in connection with discovery in a court proceeding or in any communication to the board or any other federal or state regulatory or licensing body;

(15) threats of bodily harm or retribution to a client;

(16) public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(17) voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to:

(i) a court order signed by a judge;

(ii) a summons under the provisions of:

(I) the Internal Revenue Code of 1986 and its subsequent amendments;

(II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments; or

(III) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;

(iii) a congressional or grand jury subpoena; or

(iv) applicable federal laws, federal government regulations, including requirements of the PCAOB;

(D) in an investigation or proceeding by the board;

(E) in an ethical investigation conducted by a professional organization of CPAs;

(F) in the course of a peer review under §901.159 of the Act (relating to Peer Review); or

(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.

(18) breaching the terms of an agreed consent order entered by the board or violating any Board Order.

(19) Interpretive Comment: The board has found in §519.7 of this title (relating to Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, or a License) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

(20) Interpretive comment: A conviction or final finding of unethical conduct by a competent authority, for the purpose of paragraph (8) of this subsection, includes any right to practice before the authority or findings that limit the scope of the permit or license conveyed by the authority. Conviction relates to the finding in a criminal proceeding and final finding relates to a determination in a non-criminal proceeding. Unethical conduct or activities are determined by the governmental entity making the determination of a conviction or final finding.

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 September 18, 2014.

TRD-201404452

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 8, 2014

Proposal publication date: June 6, 2014

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



## CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §519.10

The Texas State Board of Public Accountancy adopts the repeal of §519.10, concerning Cooperation with Regulatory Bodies, without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5856).

The repeal relocates this rule as new §519.11 so that the Board can implement a new rule concerning Extraordinary Cooperation.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 September 18, 2014.

TRD-201404453

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 8, 2014

Proposal publication date: August 1, 2014

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



## 22 TAC §519.10

The Texas State Board of Public Accountancy adopts new rule §519.10, concerning Extraordinary Cooperation, without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5857). The rule will not be republished.

The new rule will make licensees aware that, in the sole discretion of the enforcement committee determining the sanction, their efforts in cooperating with the client and the Board during the investigatory process could have an effect on the Board's decision.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 September 18, 2014.

TRD-201404454

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 8, 2014

Proposal publication date: August 1, 2014

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



## 22 TAC §519.11

The Texas State Board of Public Accountancy adopts the repeal of §519.11, concerning Emergency Suspension, without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5858).

The repeal is necessary to relocate this rule as new §519.12 so that the Board can implement a new rule concerning Extraordinary Cooperation.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 September 18, 2014.

TRD-201404455

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 8, 2014

Proposal publication date: August 1, 2014

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



## 22 TAC §519.11

The Texas State Board of Public Accountancy adopts new rule §519.11, concerning Cooperation with Regulatory Bodies, without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5858). The text will not be republished.

The new rule is a relocation so that the Board can implement a new rule concerning Extraordinary Cooperation.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 September 18, 2014.

TRD-201404456

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 8, 2014

Proposal publication date: August 1, 2014

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



## 22 TAC §519.12

The Texas State Board of Public Accountancy adopts new §519.12, concerning Emergency Suspension, without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5859). The rule will not be republished.



The new rule is a relocation of current §519.11 so that the Board can implement a new rule concerning Extraordinary Cooperation.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 September 18, 2014.

TRD-201404457

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 8, 2014

Proposal publication date: August 1, 2014

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



## CHAPTER 521. FEE SCHEDULE

### 22 TAC §521.1

The Texas State Board of Public Accountancy adopts an amendment to §521.1, concerning Individual License Fees, without changes to the proposed text as published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5860). The rule will not be republished.

The amendment will authorize the Board to revise the annual license renewal fee on an as needed basis without the necessity of a rulemaking process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 September 18, 2014.

TRD-201404458

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: October 8, 2014

Proposal publication date: August 1, 2014

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

#### SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

##### 31 TAC §§65.318, 65.320, 65.321

The Texas Parks and Wildlife Commission, in a duly noticed meeting on August 21, 2014, adopted amendments to §§65.318, 65.320, and 65.321, concerning the late-season provisions of the Migratory Game Bird Proclamation. Section 65.318 is adopted with changes to the proposed text as published in the May 16, 2014, issue of the *Texas Register* (39 TexReg 3806). Section 65.320 and §65.321 are adopted without changes and will not be republished. The proposed text published in the May 16, 2014, issue of the *Texas Register* also included amendments to §§65.314, 65.315, and 65.319, which address early-season species of migratory game birds (dove, rails, gallinules, snipe, woodcock, early Canada goose, and teal). Those sections were previously adopted and published in the August 12, 2014, issue of the *Texas Register* (39 TexReg 6510).

The change to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season, implements a one-bird daily bag limit for canvasback ducks. The rule as proposed would have implemented a two-bird bag limit, which was the maximum bag limit for canvasbacks allowed under last year's federal frameworks; however, the federal frameworks for this year (<https://www.federalregister.gov/articles/2014/08/22/2014-19855/migratory-bird-hunting-proposed-frameworks-for-late-season-migratory-bird-hunting-regulations#h-21>) impose a one-bird limit for canvasback ducks for the 2014-15 hunting season and the commission cannot adopt a bag limit more liberal than that allowed under the federal frameworks.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C. Parks and Wildlife Code, §64.022, authorizes the Commission to delegate rulemaking authority to the Executive Director. Department regulations (31 TAC §65.313(f)) authorize the Executive Director, after notification of the Chairman of the Commission, to engage in rulemaking.

The amendment to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season, retains the season structure and bag limits from last year for all species and adjusts the season dates to account for calendar shift. The amendment also corrects a typographical error regarding the possession limit for sandhill crane in Zone C. The possession limit is three times the daily bag limit and should be six, rather than 12.

The amendment to §65.320, concerning Extended Falconry Season - Late Season Species, adjusts season dates to reflect calendar shift.

The amendment to §65.321, concerning Special Management Provisions, adjusts the dates for the conservation season on light geese to account for calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service.

#### Ducks, Coots, and Mergansers

The department received 89 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for ducks, coots, and mergansers. Of the 89 comments, 84 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the season should begin four weeks later than the proposed starting date and end four weeks later than the proposed closing date. The department disagrees with the comment and responds that season as adopted runs to the last day permissible under the federal frameworks; therefore, starting the season four weeks later would result in the loss of four weeks of hunting opportunity. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season should begin three weeks later than the proposed starting date and end three weeks later than the proposed closing date. The department disagrees with the comments and responds that the season as adopted runs to the last day permissible under the federal frameworks; therefore, starting the season three weeks later would result in the loss of three weeks of hunting opportunity. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the season should begin two weeks later than the proposed starting date and end two weeks later than the proposed closing date. The department disagrees with the comments and responds that season as adopted runs to the last day permissible under the federal frameworks; therefore, starting the season two weeks later would result in the loss of two weeks of hunting opportunity. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the season should begin one week later than the proposed starting date and end one week later than the proposed closing date. The department disagrees with the comments and responds that season as adopted runs to the last day permissible under the federal frameworks; therefore, starting the season one week later would result in the loss of one week of hunting opportunity. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the split in the North Zone should not occur in December. The department disagrees with the comments and responds that the split is timed to give ducks the opportunity to rally and congregate with enough time left in the framework to allow for quality hunting opportunity. The splits are staggered with the intent of providing additional hunting opportunity to those hunters who hunt in both the North and South zones or who would consider doing so. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that the splits in the North and South Zones should be concurrent. The department disagrees with the comments and responds that the purpose of staggered splits is to provide additional hunting opportunity by ensuring that hunting opportunity is available in one zone while the other is closed. No changes were made as a result of the comments.

Fourteen commenters opposed adoption and stated that the early teal season should be eliminated or shortened. The department assumes the commenter believes that days from the early teal season can be used to lengthen the regular duck season. The department disagrees with the comment and responds that there is no relationship between early teal season and regular duck season. The days allotted by the federal frameworks for the special early season do not count against the 74 days of opportunity authorized under the frameworks for the general duck season; thus, eliminating or shortening the early teal season would have no effect on the number of days or season length available for the regular duck season. As a result, shortening or eliminating the early teal season would reduce hunting opportunity in contravention of the commission policy of providing the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin the third week in November and run until January 31, with a one week split. The department disagrees with the comment and responds that under the federal frameworks the department is allowed 74 days of opportunity between September 27, 2014, and January 25, 2015. Delaying the opening day until the third week in November and eliminating one week of the split would result in the overall loss of hunting opportunity, as well as a decline in hunter success due to the small amount of time during the split for ducks to congregate and rest, increase their numbers with late arrivals, and lose their wariness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin the third week in November and run to the end of the framework with no split. The department disagrees with the comment and responds that eliminating the split would result in the overall loss of hunting opportunity, as well as a decline in hunter success due to the elimination of the opportunity for ducks to congregate and rest, increase their numbers with late arrivals, and lose their wariness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people should not be hunting and killing birds at all. The department disagrees with the comment and responds that the commission is authorized under the Parks and Wildlife Code to provide a season for the take of migratory game birds, including ducks, coots, and mergansers. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the season should start the third weekend in November and run through February. The department disagrees with the comments and responds that under the federal frameworks the latest date that ducks can be hunted in Texas is January 25; thus, starting the season the third weekend in November would result in an overall loss of hunting opportunity compared to the season as adopted. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the timing of the splits in the North and South zones should be reversed to give more time for the ducks to arrive in the North Zone. The department disagrees with the comments and responds that the timing of the split in the North Zone has no effect on the migration patterns of ducks. Also, the season as adopted is intended to allow hunters to take advantage of earlier migrating ducks that arrive in coastal areas of the South Zone. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that instead of having the "season-within-a-season" structure for dusky ducks, the season for dusky ducks should be concurrent with other species but with a reduced bag limit. The department disagrees with the comments and responds that the federal frameworks specify that the season for dusky ducks must be five days shorter than the general duck season. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that the season should open later and run longer in the North Zone. The department disagrees with the comments and responds that the season as adopted runs to the end of the federal framework; therefore, starting the season later would result in an overall loss of hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the South Zone should open earlier. The department disagrees with the comment and responds that the season as adopted was selected to take advantage of the time period when the greatest number of ducks are migrating to the South Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in the South Zone should open earlier and close earlier because there is no more winter and ducks are migrating based on photoperiod. The department disagrees with the comment and responds that surveys of hunters and outfitters indicate a strong preference for a season that begins as late as possible and runs to the end of the federal frameworks while retaining the full 74 days of hunting opportunity allowable under the frameworks. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that duck season and deer season should not open on the same day. The department disagrees with the comments and responds that under federal frameworks, the department is authorized to provide 74 days of duck hunting opportunity between September 25, 2014 and January 25, 2015. Hunter surveys and public comment indicate a preference for: 1) a split season, to allow duck populations to congregate without being subjected to hunting pressure; 2) hunting opportunity over the Thanksgiving and Christmas holiday seasons; and 3) a winter segment that runs to the final day of the framework. The rule as adopted represents the department's best effort to satisfy these criteria. The department would also point out that depending on the county, duck season and deer season would not necessarily open on the same day, although in many counties, the opening days are in close proximity. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season should begin in December and close in February. The department disagrees with the comment and responds that the latest day the federal frameworks allow duck hunting in Texas in January 25; therefore, opening the season in December would result

in an overall loss of hunting opportunity. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the season should run two weeks longer. The department disagrees with the comments and responds that the latest day the federal frameworks allow duck hunting in Texas in January 25; therefore, opening the season in December would result in an overall loss of hunting opportunity. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the season splits should occur in November, not December. The department disagrees with the comments and responds that under federal frameworks, the department is authorized to provide 74 days of duck hunting opportunity between September 25, 2014 and January 25, 2015. Hunter surveys and public comment indicate a preference for: 1) a split season, to allow duck populations to congregate without being subjected to hunting pressure; 2) hunting opportunity over the Thanksgiving and Christmas holiday seasons; and 3) a winter segment that runs to the final day of the framework. The rule as adopted represents the department's best effort to satisfy these criteria. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the split season should be eliminated. The department disagrees with the comments and responds that eliminating the split would result in the overall loss of hunting opportunity, as well as a decline in hunter success due to the elimination of the opportunity for ducks to congregate and rest, increase their numbers with late arrivals, and lose their wariness. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the split season should occur in early December rather than mid-December. The department disagrees with the comment and responds that the split season is consistent with the season structure from last year. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the split should be the same in the North and South zones. The department disagrees with the comment and responds that the splits are staggered with the intent of providing additional hunting opportunity to those hunters who hunt in both zones or who would consider doing so. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be closed in November and open for the entire month of December. The department disagrees with the comment and responds that under federal frameworks, the department is authorized to provide 74 days of duck hunting opportunity between September 25, 2014 and January 25, 2015. Hunter surveys and public comment indicate a preference for: 1) a split season, to allow duck populations to congregate without being subjected to hunting pressure; 2) hunting opportunity over the Thanksgiving and Christmas holiday seasons; and 3) a winter segment that runs to the final day of the framework. Eliminating hunting days in November would result in an overall loss of hunting opportunity, and the department believes that elimination of the split season would result in a decline in hunter success. The rule as adopted represents the department's best effort to satisfy these criteria. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the split season should begin the Monday after Thanksgiving and end the second Saturday in December. The department disagrees with

the comments and responds that the season as adopted represents the commission policy to maximize hunting opportunity over the Thanksgiving and Christmas holidays. No changes were made as a result of the comments.

One commenter opposed adoption and stated that opening day in the South Zone should be one week later and that week should be added to the front of the winter segment. The department disagrees with the comment and responds that the season as adopted is intended to allow hunters to take advantage of migrating birds that arrive in coastal areas of the South Zone in large numbers early in the fall. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open later. The department disagrees with the commenter and responds that moving the season later would preclude the opportunity to provide a two-week split and result in a loss of quality hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin on November 8 and run to February while retaining a two-week split. The department disagrees with the comment and responds that under the federal frameworks the latest date that ducks can be hunted in Texas is January 25; thus, starting the season on November 8 and retaining a two-week split would result in an overall loss of hunting opportunity compared to the season as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for redheaded ducks should be increased to 3. The department disagrees with the comment and responds that the rule as adopted establishes a two-bird bag limit for redheaded ducks, which is the maximum allowed under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for redheaded ducks should be increased. The department disagrees with the comment and responds that the rule as adopted establishes a two-bird bag limit for redheaded ducks, which is the maximum allowed under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for canvasback ducks should be one. The department agrees with the comment and responds that the rule as adopted establishes a one-bird bag limit for canvasback ducks, which is the maximum allowable under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that duck and goose seasons should end on the same day in order to provide an extra week of duck hunting. The department disagrees with the comment and responds that the rule as adopted establishes a duck season that is the maximum length allowable under the federal frameworks, closing on January 25, 2015, which is the last day that duck seasons may be open in Texas under the federal frameworks. No changes were made as a result of the comment.

The department received 248 comments in support of adoption of the portion of proposed §65.318 that establishes season dates and bag limits for ducks, coots, and mergansers.

Geese

The department received 30 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for geese. Of the 30 commenters, 25 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the season should be moved back two weeks. The department disagrees with the comment and responds that the closing dates as adopted were chosen to optimize the impact of the light goose conservation order. In order to take advantage of the conservation order, the state is required by federal frameworks to close all other seasons for migratory birds. Therefore, allowing any season to remain open beyond January 27 in the Eastern Zone would effectively defeat the purpose of the conservation order, which is to harvest large numbers of snow geese in order to protect Canadian breeding grounds from the effects of overpopulation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people should not be hunting and killing these birds at all. The department disagrees with the comment and responds that the commission is authorized under the Parks and Wildlife Code to provide a season for the take of migratory game birds, including geese. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated (in various ways) that the season for white-fronted geese should run until January 25th. The department disagrees with the comments and responds that in order to run the white-fronted goose season to the end of the duck season (January 25th) while utilizing all 72 days of hunting opportunity available under the federal frameworks, the season would have to open two weeks later; however, because white-fronted geese are plentiful early in the season and other goose species are not, the result essentially would be to eliminate two weeks of quality hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season for white-fronted geese should open earlier and be concurrent with the season for Canada geese. The department disagrees with the comment and responds that under the federal frameworks, the season for white-fronted geese may not exceed 72 days, but the season length for other dark geese is 107 days; therefore, making the season for white-fronted geese concurrent with the season for dark geese would result in a loss of hunting opportunity for species other than white-fronted geese, which is contrary to the commission's general policy of providing the most liberal bag limits possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for snow geese should be lowered. The department disagrees with the comment and responds that in the absence of compelling biological information that indicates a need to reduce the bag limit, the commission policy is to adopt the most liberal bag limits possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for white-fronted geese should be closed during the split in the duck season, which would allow the season to close concurrently with duck season. The department disagrees with the comment and responds that the season structure as adopted takes advantage of the migratory chronology of white-fronted geese, which tend to arrive in Texas in huntable numbers in early November.

The department also notes that the white-fronted goose season is limited to 72 days under the federal frameworks, while the duck season is 74 days; therefore, making goose season concurrent with ducks season would result in reduced hunting opportunity due to the loss of a weekend of goose hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that electronic callers should be lawful for hunting white-fronted geese. The department disagrees with the comment and responds that the federal frameworks do not allow the use of electronic calling devices during any season other than the light goose conservation season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in the Western Zone should end the second weekend in February. The department disagrees with the comment and responds that the closing dates as adopted were chosen to allow for goose seasons to approximate the duck season in the High Plains and optimize the impact of the light goose conservation order. In order to take advantage of the conservation order, the state is required by federal frameworks to close all other seasons for migratory birds. Therefore, allowing any season to remain open beyond February 1 in the Western Zone would effectively defeat the purpose of the conservation order, which is to harvest large numbers of snow geese in order to protect Canadian breeding grounds from the effects of overpopulation. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that all seasons should end on the same day. The department disagrees with the comment and responds that the white-fronted goose season is limited to 72 days under the federal frameworks, while the duck season is 74 days; therefore, making goose season concurrent with duck season would result in reduced hunting opportunity due to the loss of a weekend of goose hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the bag limit should be reduced to five birds. The commenter did not indicate to which species the comment was intended to apply, but the department nevertheless disagrees with the comment and responds that in the absence of compelling biological information that indicates a need to reduce the bag limit, the commission policy is to adopt the most liberal bag limits possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open on November 8. The department disagrees with the comment and responds that opening the season one week later would result in either fewer days of hunting opportunity or a diminution in effectiveness of the light goose conservation order, as well as the loss of concurrent opening days for all waterfowl. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the department was misleading the public by stating that the bag and possession limits for Canada geese are the maximum allowable under the federal frameworks. The department disagrees with the comments and responds that although it is the commission policy to adopt the most liberal provisions possible under the federal frameworks, such decisions are made within the context of the principles of sound biological management. Department biologists believe that the population status of Canada geese in the Eastern Zone warrants a bag limit of three birds. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should end later. The department disagrees with the comment and responds that the closing dates as adopted were chosen to optimize the impact of the light goose conservation order. In order to take advantage of the conservation order, the state is required by federal frameworks to close all other seasons for migratory birds. Therefore, allowing any season to remain open beyond February 1 in the Western Zone would effectively defeat the purpose of the conservation order, which is to harvest large numbers of snow geese in order to protect Canadian breeding grounds from the effects of overpopulation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bag limits should be lowered because the birds are responding to agricultural declines in Texas by going to the Mississippi Flyway. The department disagrees with the comment and responds that there is no evidence to suggest that hunting mortality is a contributing factor to population displacement. No changes were made as a result of the comment.

The department received 209 comments in support of adoption of the portion of proposed §65.318 that establishes season dates and bag limits for geese.

#### Sandhill Cranes

The department received 15 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for sandhill cranes. Of the 15 commenters opposing adoption, 14 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that there should be a season in southeast Texas. The department disagrees with the comments and responds that under the federal frameworks, crane hunting is authorized only in specific areas. The Service authorizes crane hunting in three zones that encompass approximately the western two-thirds of the state. Much of east Texas is excluded, and the department cannot allow crane hunting in that area without the prior approval of the Service. No changes were made as a result of the comments.

One commenter opposed adoption and stated that people should not be hunting and killing these birds at all. The department disagrees with the comment and responds that the commission is authorized under the Parks and Wildlife Code to provide a season for the take of migratory game birds, including sandhill cranes. No changes were made as a result of the comment.

Seven commenters opposed adoption and stated that the season should open earlier in Zone C. The department disagrees with the comments and responds that the season structure is designed to ensure that migrating whooping cranes are not readily available. Therefore, the opening day must be delayed in order to protect endangered whooping cranes as they migrate to their wintering grounds. The federal Endangered Species Act requires states to limit any human activity considered hazardous to endangered species, including recreational hunting of similar-appearing migratory game birds. Whooping cranes, which have characteristics similar to sandhill cranes, are typically still in migration to the Aransas National Wildlife Refuge through the beginning of December. Also, the maximum season length in Zone C is 37 days. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should not be a season for sandhill cranes. The department disagrees with the comment and responds that the commission is authorized under the Parks and Wildlife Code to provide a season for the take of migratory game birds, including sandhill cranes. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the seasons in zones B and C should be the same. The department disagrees with the comments and responds that under the federal frameworks, the maximum season length allowable in Zone C is 37 days; thus implementing the same season dates for zones B and C would result in a reduction of hunting opportunity in Zone B. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should be the same in all zones. The department disagrees with the comment and responds that maximum season length for each zone is established under the federal frameworks and cannot be increased by the commission. No changes were made as a result of the comment.

The department received 173 comments in support of adoption of the portion of proposed §65.318 that establishes season dates and bag limits for sandhill cranes.

#### Youth-Only Waterfowl Season

The department received 18 comments opposing adoption of the portion of proposed §65.318 that establishes the youth-only waterfowl season. Of the 18 commenters, 17 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the youth-only season is discriminatory. The department disagrees with the comment and responds that under Parks and Wildlife Code, §61.058, the commission is authorized to provide for special open seasons during which the taking and possession of game animals and game birds are restricted to persons under 17 years old, that the federal frameworks provide for a youth-only waterfowl season, and that the youth-only season does not violate any provision of the Texas or United States constitutions. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no special seasons for anyone. The department disagrees with the comment and responds that youth seasons are intended to increase youth interest in hunting and to offer adults the opportunity to mentor youth. Also, youth seasons are authorized by the Parks and Wildlife Code and the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people should not be hunting and killing these birds at all. The department disagrees with the comment and responds that the commission is authorized under the Parks and Wildlife Code to provide a season for the take of migratory game birds, including waterfowl. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the youth-only season should be the weekend before the regular season. The department agrees with the comment and responds that the youth-only season begins the week before the regular season. No changes were made as a result of the comment.

Seven commenters opposed adoption and stated that the youth-only season should take place the weekend following the close of the duck season. The department disagrees with the com-

ments and responds that the youth-only dates are placed prior to the beginning of the regular season because placing youth-only dates during the split between segments would defeat the purpose of the split, which is to allow ducks to rest. In addition, placing youth-only dates at the end of the season would result in less than desirable hunting conditions for youth, because duck populations at that time of the season are diminished due to hunting and natural mortality and the remaining ducks are extremely wary. Therefore, the department has determined that the weekend prior to the opening of duck season is the ideal time to locate the youth-only days. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the youth-only season should take place during the split in the duck season. The department disagrees with the comments and responds that the youth-only dates are placed prior to the beginning of the regular season because placing youth-only dates during the split between segments would defeat the purpose of the split, which is to allow ducks to rest. In addition, placing youth-only dates at the end of the season would result in less than desirable hunting conditions for youth, because duck populations at that time of the season are diminished due to hunting and natural mortality and the remaining ducks are extremely wary. Therefore, the department has determined that the weekend prior to the opening of duck season is the ideal time to locate the youth-only days. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the youth-only season should be longer. The department disagrees with the comment and responds that the federal frameworks specifically provide for a two-day youth-only season and the department believes that this is adequate to provide an opportunity for mentoring. The department believes that additional days of youth hunting would come at the expense of hunter opportunity, since any additional days would count against the maximum of 74 days of hunting allowed under the federal frameworks. No changes were made as a result of the comment.

The department received 173 comments in support of adoption of the portion of proposed §65.318 that establishes the youth-only waterfowl season.

#### Extended Falconry Season

The department received eight comments opposing adoption of proposed §65.320 that establishes the extended falconry season. Of the eight commenters, seven articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Six commenters opposed adoption and stated that the early teal season should be eliminated and the days added to the regular duck season, which would benefit falconers. The department disagrees with the comment and responds that days cannot be taken from the September teal season and added to duck season because the duck season in Texas is already at the maximum number of days allowed by federal law. No changes were made as a result of the comments.

One commenter opposed adoption and stated that people should not be hunting and killing these birds at all. The department disagrees with the comment and responds that the commission is authorized under the Parks and Wildlife Code to provide a season for the take of migratory game birds, including by means of falconry. No changes were made as a result of the comment.

The department received 80 comments in support of adoption of the portion of proposed §65.318 that establishes the youth-only waterfowl season.

#### Light Goose Conservation Order

The department received 17 comments opposing adoption of proposed §65.321 that establishes the light goose conservation order. Of the 17 commenters, 15 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Seven commenters opposed adoption and stated that the conservation season should be eliminated. The department disagrees with the comment and responds that Texas must do its part in the interstate and international effort to curtail light goose populations in order to prevent habitat degradation on their Arctic breeding grounds. No changes were made as a result of the comments.

One commenter opposed adoption and stated that people should not be hunting and killing these birds at all. The department disagrees with the comment and responds that the commission is authorized under the Parks and Wildlife Code to provide a season for the take of migratory game birds, including geese. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should run until the last day of March. The department disagrees with the comment and responds that the season closure as adopted represents the point in the year when most geese have departed. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the conservation season should be open during the duck split. The department disagrees with the comment and responds that the federal frameworks provide that the conservation season cannot be opened unless all other migratory bird hunting seasons are closed. To open the conservation season during a split in the goose season, the department would have to close seasons for ducks and sandhill crane, which would reduce overall hunter opportunity and conflict with commission policy to provide the maximum hunter opportunity possible under federal frameworks issued by the Service. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the conservation season should start earlier. The department disagrees with the comment and responds that hunter preference for other species of waterfowl precludes the opening of the conservation season any earlier, since under the federal frameworks all other seasons would have to be closed in order to implement the conservation season. No changes were made as a result of the comments.

The department received 193 comments in support of adoption of the portion of proposed §65.318 that establishes the light goose conservation order.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

*§65.318. Open Seasons and Bag and Possession Limits--Late Season.*

Except as specifically provided in this section, the possession limit for all species listed in this section shall be three times the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; three scaup (lesser scaup and greater scaup in the aggregate); two redheads; two pintail; one canvasback; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established in subparagraphs (A)(ii), (B)(ii), and (C)(ii) of this paragraph. For all other species not listed, the bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

#### (A) High Plains Mallard Management Unit:

(i) all species other than "dusky ducks": October 25 - 26, 2014 and October 31, 2014 - January 25, 2015.

(ii) "dusky ducks": November 3, 2014 - January 25, 2015.

#### (B) North Zone:

(i) all species other than "dusky ducks": November 1 - December 7, 2014 and December 20, 2014 - January 25, 2015.

(ii) "dusky ducks": November 6 - December 7, 2014 and December 20, 2014 - January 25, 2015.

#### (C) South Zone:

(i) all species other than "dusky ducks": November 1 - 30, 2014 and December 13, 2014 - January 25, 2015.

(ii) "dusky ducks": November 6 - November 30, 2014 and December 13, 2014 - January 25, 2015.

#### (2) Geese.

##### (A) Western Zone.

(i) Light geese: November 1, 2014 - February 1, 2015. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 1, 2014 - February 1, 2015. The daily bag limit for dark geese is five, to include no more than one white-fronted goose.

##### (B) Eastern Zone.

(i) Light geese: November 1, 2014 - January 25, 2015. The daily bag limit for light geese is 20, and there is no possession limit.

##### (ii) Dark geese:

(I) White-fronted geese: November 1, 2014 - January 11, 2015. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 1, 2014 - January 25, 2015. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 1, 2014 - February 1, 2015. The daily bag limit is three. The possession limit is nine.

(B) Zone B: November 21, 2014 - February 1, 2015. The daily bag limit is three. The possession limit is nine.

(C) Zone C: December 20, 2014 - January 25, 2015. The daily bag limit is two. The possession limit is six.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraphs (1) and (2) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 18-19, 2014;

(B) North Zone: October 25 - 26, 2014; and

(C) South Zone: October 25 - 26, 2014.

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 September 19, 2014.

TRD-201404483

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: October 9, 2014

Proposal publication date: May 16, 2014

For further information, please call: (512) 389-4775



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

### **PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT**

#### **CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS**

##### **37 TAC §215.7**

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §215.7, concerning Training Provider Advisory Board, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5129). The rule will not be republished.

The amendment to 37 Texas Administrative Code §215.7, Training Provider Advisory Board, expands training advisory board duties and allows the board to set policies and procedures for the academy with consent of the chief administrator.

This amendment is necessary to clarify the inter-advisory board relationship between advisory board members and chief administrator.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board.

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 September 18, 2014.

TRD-201404443

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Effective date: November 1, 2014

Proposal publication date: July 4, 2014

For further information, please call: (512) 936-7713



##### **37 TAC §215.9**

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §215.9, concerning Training Coordinator, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5130). The rule will not be republished.

The amendment to 37 Texas Administrative Code §215.9, Training Coordinator, removes enforcement of admission, attendance, retention, and other standards set by the commission from the training advisor to the advisory board.

This amendment is necessary to clarify the inter-advisory board relationship and duties between advisory board members and the chief administrator.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; 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.

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

TRD-201404444

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Effective date: November 1, 2014

Proposal publication date: July 4, 2014

For further information, please call: (512) 936-7713



#### **CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION**

##### **37 TAC §217.1**

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.1, concerning Minimum Standards for Initial Licensure without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5131). The rule will not be republished.



The repeal of 37 Texas Administrative Code §217.1, Minimum Standards for Initial Licensure, is replaced by new rule which combines initial licensing and enrollment standards into one rule, including telecommunicator requirements.

This repeal is necessary to recodify and combine all enrollment and licensure standards into one rule for ease of reference and to make more user friendly.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151 General Powers of the Commission; Rulemaking Authority.

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 September 18, 2014.

TRD-201404445

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Effective date: November 1, 2014

Proposal publication date: July 4, 2014

For further information, please call: (512) 936-7713



### 37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) adopts new §217.1, concerning Minimum Standards for Enrollment and Initial Licensure, with changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5132). The section will be republished.

New 37 Texas Administrative Code §217.1, Minimum Standards for Enrollment and Initial Licensure, combines initial licensing and enrollment standards into one rule, including telecommunicator requirements.

This new rule is necessary to recodify and combine all enrollment and licensure standards into one rule for ease of reference and to make more user friendly.

No comments were received regarding adoption of this new rule.

This new rule is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority.

#### §217.1. *Minimum Standards for Enrollment and Initial Licensure.*

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation that the individual meets eligibility for licensure and:

- (1) a high school diploma;
- (2) a high school equivalency certificate; or
- (3) for the basic peace officer training course, an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(b) The commission shall issue a license to an applicant who meets the following standards:

- (1) age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

- (i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or
- (ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level; or

(B) holds a high school diploma;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation;

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be

in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code §501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable or other discharge based on misconduct which bars future military service;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) A person must meet the training and examination requirements:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course(s);

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency; or

(3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license expires:

(1) 12 months from the original appointment date; or

(2) on completion of training and passing of the jailer licensing examination.

(h) The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires 12 months from the original appointment date.

(i) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(j) The effective date of this section is November 1, 2014.

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 September 18, 2014.

TRD-201404446

Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Effective date: November 1, 2014  
Proposal publication date: July 4, 2014  
For further information, please call: (512) 936-7713



### 37 TAC §217.2

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.2, concerning Minimum Standards for Telecommunicators, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5134). The rule will not be republished.

The repeal of 37 Texas Administrative Code §217.2, Minimum Standards for Telecommunicators, is replaced by a new rule which combines initial licensing and enrollment standards into one rule, including telecommunicator requirements.

This repeal is necessary to recodify and combine all enrollment and licensure standards into one rule for ease of reference and to make the rule more user friendly.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.405, Telecommunicators.

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 September 18, 2014.

TRD-201404447  
Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Effective date: November 1, 2014  
Proposal publication date: July 4, 2014  
For further information, please call: (512) 936-7713



### 37 TAC §217.23

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.23, concerning Basic Licensing Enrollment Standards, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5134). The rule will not be republished.

The repeal of 37 Texas Administrative Code §217.23, Basic Licensing Enrollment Standards, is replaced by a new rule which combines initial licensing and enrollment standards into one rule, including telecommunicator requirements.

This repeal is necessary to recodify and combine all enrollment and licensure standards into one rule for ease of reference and to make the rule more user friendly.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151; General Powers of Commission; Rulemaking Authority.

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 September 18, 2014.

TRD-201404448  
Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Effective date: November 1, 2014  
Proposal publication date: July 4, 2014  
For further information, please call: (512) 936-7713



### 37 TAC §217.25

The Texas Commission on Law Enforcement (Commission) adopts the repeal of §217.25, concerning Telecommunicator Enrollment Standards, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5135). The rule will not be republished.

The repeal of 37 Texas Administrative Code §217.25, Telecommunicator Enrollment Standards, is replaced by new rule which combines initial licensing and enrollment standards into one rule, including telecommunicator requirements.

This repeal is necessary to recodify and combine all enrollment and licensure standards into one rule for ease of reference and to make more user friendly.

No comments were received regarding adoption of this repeal.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151; General Powers of Commission; Rulemaking Authority.

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 September 18, 2014.

TRD-201404449  
Kim Vickers  
Executive Director  
Texas Commission on Law Enforcement  
Effective date: November 1, 2014  
Proposal publication date: July 4, 2014  
For further information, please call: (512) 936-7713



## CHAPTER 221. PROFICIENCY CERTIFICATES

### 37 TAC §221.13

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §221.13, concerning Emergency Telecommunicator Proficiency, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5135). The rule will not be republished.

The amendment to 37 Texas Administrative Code §221.13, Emergency Telecommunicator Proficiency, adds a master proficiency certification for telecommunicators.

This amendment is necessary to create consistent proficiency levels for all licenses.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.405, Telecommunicators.

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 September 18, 2014.

TRD-201404450

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Effective date: November 1, 2014

Proposal publication date: July 4, 2014

For further information, please call: (512) 936-7713



### 37 TAC §221.31

The Texas Commission on Law Enforcement (Commission) adopts an amendment to §221.31, concerning Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency, without changes to the proposed text as published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5136). The rule will not be republished.

There was an incorrect reference in the proposed preamble. However, the rule text is being adopted without changes to the proposed text.

The amendment to 37 Texas Administrative Code §221.31, Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency, removes obsolete rule cross-referencing.

This amendment is necessary remove obsolete rule cross-referencing.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.357, Weapons Proficiency for Certain Retired Peace Officers and Federal Law Enforcement Officers and for Former Reserve Law Enforcement Officers.

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 September 18, 2014.

TRD-201404451

Kim Vickers

Executive Director

Texas Commission on Law Enforcement

Effective date: November 1, 2014

Proposal publication date: July 4, 2014

For further information, please call: (512) 936-7713



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 11. DESIGN

##### SUBCHAPTER F. TRANSPORTATION ALTERNATIVES PROGRAM

###### 43 TAC §§11.300 - 11.317

The Texas Department of Transportation (department) adopts new §§11.300 - 11.317, concerning the Transportation Alternatives Program. The new sections are adopted with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5325).

#### EXPLANATION OF ADOPTED NEW SECTIONS

The Transportation Alternatives Program (TAP) was created by the Moving Ahead for Progress in the 21st Century Act (also known as MAP-21). The TAP provides federal funding for a variety of alternative transportation projects, many of which were previously eligible for funding under separate programs. The TAP is contained in 23 U.S.C. §213.

Many of the concepts contained in the new sections are carried forward from the department's administrative rules concerning the Transportation Enhancement (TE) Program, the predecessor to the TAP, and will be familiar to interested parties.

New Subchapter F is titled "Transportation Alternatives Program" to accurately reflect and conform to federal law.

New §11.300, Purpose, describes the purpose of the subchapter, which is to set out the policies and procedures for the implementation and administration of the TAP.

New §11.301, Definitions, defines various terms used in the new subchapter, which are standard and recognizable within the transportation planning community.

New §11.302, Program Administration, briefly describes the sub-allocation of TAP funds as required by federal law, and provides that each Metropolitan Planning Organization (MPO) serving an urbanized area with a population over 200,000 will implement the TAP for the award of funds in that area. The remaining TAP funds will be distributed through a competitive process administered by the department.

New §11.303, Project Selection and Implementation by MPOs, provides general guidance for MPOs that are responsible for the review and selection of TAP projects. The department is not mandating how the MPOs will conduct the selection process; however, project selection and implementation must be conducted in accordance with applicable state and federal laws and regulations. Eligibility determinations will be made by the MPO, subject to audit by the Federal Highway Administration (FHWA). Projects, or substantially similar projects, submitted

during a program call administered by the MPO are not eligible for consideration under a program call administered by the department. MPOs are required to provide the department a list of all projects submitted during a program call, specifically identifying the selected projects, and must include selected projects within their respective Transportation Improvement Programs (TIPs).

New §11.304, Eligible Activities, describes those activities for which TAP funds may be awarded under a program call administered by the department. These activities include construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation; construction of infrastructure-related projects and systems to improve safe routes for non-drivers; conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users; and construction of infrastructure-related projects to improve the ability of students to bike and walk to school. Several types of activities that are defined as "transportation alternatives" under federal law will not be considered for funding under a program call administered by the department. The agency is placing an emphasis on facilities for pedestrians, bicyclists and other non-motorized forms of transportation, as well as certain types of infrastructure projects formerly eligible under the Safe Routes to School Program, in an effort to encourage the development of a safe and multimodal transportation system. Non-infrastructure activities formerly eligible under the Safe Routes to School Program remain eligible for funding from other sources. Projects requiring the acquisition of real property through eminent domain or condemnation are not eligible. Whether proposed as an independent project or an element of a larger project, the project must be limited to a logical unit of work and be constructible as an independent project.

New §11.305, Allowable Costs, provides that the use of federal funds is limited to construction-related project expenditures and eligible project costs incurred by the department. The costs of preliminary engineering are not allowable, and expenditures for routine operation and maintenance are not reimbursable unless specifically allowed under the applicable federal program category. These limitations on allowable costs are based on the department's experience under the TE Program, where much of the funding for selected projects was ultimately expended on the planning and design phase. As a result, many projects were left with inadequate funding and could not be built as originally proposed.

New §11.306, Local Funding Match, specifies that the local funding match will be a cash match or in-kind contribution provided by or through the project sponsor. In-kind contributions may only include actual and documented pre-construction or construction-related costs incurred by the project sponsor that are otherwise eligible for reimbursement under applicable statutes and regulations. Unless specifically authorized under federal law or regulation, funds from other federal programs may not be used as a local funding match. Donated services will not be accepted as a match, but may be used to reduce the overall cost of the project. If a selected project is to be administered by the department, the project sponsor must provide the cash portion of the local funding match prior to the commencement of project activities.

New §11.307, Call for Nominations, describes the method by which the department will announce a call for projects and the type of information that will be included in the notice. The department may limit a program call to a particular type of eligible

activity, in order to focus its efforts towards making an overall impact in a specific area.

New §11.308, Nomination Package, specifies the manner in which a project sponsor must submit its nomination and the type of information and justification that must be included in the nomination package. Project sponsors must provide persuasive evidence of support from the local community and a commitment to provide a match of 20% of the allowable project costs. If the project is located in a county that has been certified by the Texas Transportation Commission (commission) as an economically disadvantaged county, the nomination package may include a request for adjustment to the minimum local match requirement. For those projects in which the commission is authorized to provide state cost participation, the department may adjust the match amount. Project submissions must be received by the published deadline and any nomination package that fails to include the required items will be considered incomplete and not considered for funding.

New §11.309, Project Screening and Evaluation, describes the method by which the department will conduct the project review process. Under the TE Program, the department used a bifurcated process that separated the eligibility/technical screening from the evaluation of project benefits. In an effort to streamline the review process for the TAP, the executive director will appoint a project evaluation committee consisting of department staff to review and evaluate all aspects of the project. The committee will provide selection recommendations to the director of the division responsible for administering the TAP, who will then provide a list of recommended projects to the commission for consideration.

New §11.310, Finding of Ineligibility; Request for Reconsideration, provides that the department will notify project sponsors of each ineligible activity proposed and the reason for the determination, and describes how a project sponsor may request a reconsideration of the determination.

New §11.311, Selection of Projects by the Commission, describes the process by which the commission will select projects for funding under the TAP. In making the selection, the commission will consider: (1) recommendations from the director of the division responsible for administering the program; (2) the potential benefit to the state of the project; and (3) whether the project enhances the surface transportation system. The commission will not be bound by the department's recommendations. Funds awarded by the commission are a fixed amount and any additional funds needed for the project must be provided by the project sponsor or sought during subsequent program calls.

New §11.312, Inclusion of Selected Projects in Planning Documents, provides that the department will request that MPOs include projects selected by the commission within their respective TIPs. The department will also include all selected projects in the Statewide Transportation Improvement Program (STIP).

New §11.313, Project Implementation, describes the operational responsibilities of project sponsors, as well as the department's role, during implementation of the project. These guidelines will help ensure effective and efficient implementation of each project selected by the commission. Project sponsors are expected to implement or arrange for implementation of a selected project; however, the department, in its sole discretion, may agree to implement a project on behalf of a project sponsor. All selected projects must be developed according to current standards and

specifications and in accordance with new Subchapter F. Project sponsors must enter into a local agreement with the department and comply with all applicable state and federal requirements related to the development of federal-aid highway projects. The department will ensure that all required opportunities for public involvement have been followed and that all environmental documentation has been completed prior to funding construction activities. Funding from other federal programs may only be used when specifically authorized by federal law or regulation. Changes to the scope of work must be approved in advance by the executive director. The department is responsible for final project inspection and acceptance. If the project sponsor does not complete the project as approved, the department may seek reimbursement of the expended federal funds.

New §11.314, Payment of Costs, provides that the department will submit all requests for reimbursement to FHWA and describes the manner in which costs for locally-administered projects may be submitted for reimbursement. All project costs are borne by the project sponsor until reimbursement can be obtained. Costs incurred prior to inclusion of the project in the STIP, execution of the local agreement, and prior to state and federal authorization are not eligible for reimbursement.

New §11.315, Elimination from the TAP, specifies that a project will be eliminated from the TAP if the department is notified of opposition from the local jurisdiction in which the project is located. In addition, the executive director may eliminate a project from the TAP if: (1) the project sponsor fails to meet the requirements of the proposed subchapter; (2) implementation of the project would require a significant deviation from the activities proposed in the nomination package; (3) the project sponsor withdraws from the project; (4) a construction contract has not been awarded within three years of project selection; (5) a local agreement has not been executed within one year of project selection; or (6) the executive director determines that federal funding may be jeopardized because the project has not been implemented or completed.

New §11.316, Project Transfer; Approval of Change, outlines the basic steps required to transfer a project to another entity in the event of a legislative action and specifies that the disposition must be approved by FHWA.

New §11.317, Maintenance and Operation; Dedication for Public Use, provides that a selected project must be maintained and operated for the purpose for which it was approved and funded, and offers guidance regarding the expected project lifespan as it relates to the federal investment.

## COMMENTS

Overview: The department received a total of 303 comments on the proposed rules. Of those comments, 20 related to the MPO project selection process, 154 related to the continuation of the Safe Routes to School (SRTS) Program, 13 related to the types of eligible activities that will be considered under the TAP, 13 related to allowable costs, 14 related to the required local funding match, 2 related to project screening and evaluation, 74 related to elimination of projects from the TAP and one related to public involvement. In addition, the department received 11 comments supporting bicycling and promoting bicycle safety in general. The department also received one comment expressing support for a law for cyclists similar to the slow down and change lanes legislation for law enforcement and tow trucks. This particular comment is not related to the TAP and will not be addressed.

The department received comments from the City of Houston, the City of Fort Worth, the City of Belton, the City of McKinney, the City of Harker Heights, the City of Copperas Cove, the City of Killeen, the Regional Transportation Council of the North Central Texas Council of Governments, the East Texas Chief Elected Officials/Rural Planning Organization, BikeTexas, the agency's Bicycle Advisory Committee and members of general public.

Comment: Eliminate or modify the provision that requires applications for projects located in areas over 200,000 to be submitted only to the MPO. Allow cities the option to submit applications to either the MPO or department portion of the program.

This comment was received from the City of Fort Worth, the City of Belton, the City of McKinney, the City of Harker Heights, the City of Copperas Cove, the City of Killeen and the Regional Transportation Council of the North Central Texas Council of Governments. In addition, 12 comments of a similar nature were received from members of the general public. The department notes that the City of Houston supported §11.303 as proposed.

Response: The department has eliminated this provision from §11.303.

Comment: Eliminate the provision that does not allow applications not selected by the MPO to be considered for the department's program call.

This comment is a continuation of the previous comment. However, the department is addressing it separately in an effort to avoid confusion regarding the changes to §11.303.

Response: The department disagrees with this approach. In addition, the language contained in §11.303(d) has been revised to clarify that the same or substantially similar project may not be submitted to both the MPO program call and a department program call. Due to the number of eligible projects and the limited amount of TAP funds, the department feels that project sponsors should only have one opportunity to submit a potential project for consideration.

Comment: Do not cancel Texas' SRTS program. SRTS should receive at least 20% of TAP funds so Texas can continue to be a national leader in this significant program.

This comment was received from BikeTexas. In addition, 153 comments of a similar nature were received from members of the general public.

Response: The department disagrees with this approach and is not revising the language contained in §11.304(a)(4). Under MAP-21, states have the option to continue eligible SRTS program activities and are no longer required to have a program coordinator. The department's existing SRTS program will remain in place until all funds awarded under that program have been expended. However, in the future, all eligible SRTS activities will be transitioned to the TAP and other existing federal programs. The department notes that new §11.307(c) provides that a program call may be limited to a particular type of eligible activity, in order to focus the agency's efforts towards making an overall impact in a specific area. At some point in the future the department may, at its discretion, issue a program call directed solely at infrastructure projects designed to improve the ability of students to bike and walk to school.

Comment: Allow infrastructure and non-infrastructure SRTS programs to be funded through the TAP.

This comment was received from BikeTexas. In addition, 10 comments of a similar nature were received from members of the general public.

Response: The department disagrees with this approach and is not revising the language contained in §11.304(a)(4). The TAP will be focused on the construction of certain facilities, projects and systems that the department believes will aid in the development of a safe and multimodal transportation system. The department notes that non-infrastructure activities formerly eligible under the SRTS program (such as public awareness campaigns, outreach efforts and educational programs) are eligible for funding from other sources outside of the TAP.

Comment: Remove references to eminent domain and condemnation being disallowed for TAP projects.

This comment was received from BikeTexas.

Response: The department disagrees with this approach and is not revising the language contained in §11.304(b). The TE Program rules contained similar language, so project sponsors should be familiar with this particular exclusion. Local entities have not expressed any significant project development need or desire to include this type of activity during recent TE Program calls.

Comment: Preservation of historic facilities is important to our heritage and its exclusion prevents hardships for rural areas. Permit TAP funding for all activities eligible under federal law.

This comment was received from the East Texas Chief Elected Officials/Rural Planning Organization.

Response: The department disagrees with this approach and is not revising the language contained in §11.304. As previously stated, the TAP will be focused on the construction of certain facilities, projects and systems that the department believes will aid in the development of a safe and multimodal transportation system.

Comment: Allow TAP funds to be used for preliminary planning and engineering.

This comment was received from BikeTexas, the City of Copperas Cove and the East Texas Chief Elected Officials/Rural Planning Organization. In addition, 10 comments of a similar nature were received from members of the general public.

Response: The department disagrees with the approach and is not revising the language contained in §11.305(b). In past program calls under the TE Program much of the funding for selected projects was expended on the development of plans, specifications and estimates. As a result, many projects were left with inadequate funding and could not be completed. The department eventually excluded preliminary planning and engineering costs from reimbursement under the TE Program. The department wants to avoid repeating this situation during the implementation of future TAP projects. One comment requested an exception for cities that issue debt to cover these costs, suggesting that the department's concerns regarding project completion are not relevant to bond-financed projects. However, the department believes that a consistent approach with regard to allowable costs is necessary for effective and efficient implementation of the TAP.

Comment: Do not require the local match to be cash only. Allow use of an in-kind match.

This comment was received from BikeTexas, the department's Bicycle Advisory Committee and the East Texas Chief Elected Officials/Rural Planning Organization. In addition, 10 comments of a similar nature were received from members of the general public.

Response: The department received numerous variations on this particular comment, such as (1) allow up to 15% of the local match to be in-kind; (2) allow up to 15% of the local match to be in-kind for areas with a population less than 200,000, and (3) allow in-kind match to be used as allowed by federal law. Based on these comments, the department has revised §11.306 to allow for the use of in-kind contributions. The department also recognizes that providing a 20% match may not be achievable for certain communities. Therefore, §11.308 has been revised to allow for adjustments to the minimum local funding match requirement for counties that have been certified by the commission as economically disadvantaged.

Comment: The state should provide the 20% match.

This comment was received from one member of the general public.

Response: The department disagrees with this comment and is not eliminating the local match requirement. The department believes that local commitment to the project is demonstrated by providing a match. A local funding match was required under the TE Program, so project sponsors should be familiar with the department's expectations in this regard.

Comment: Cities should be awarded points for in-kind contributions under §11.309, Project Screening and Evaluation, and §11.311, Selection of Projects by the Commission.

This comment was received from the City of Copperas Cove.

Response: The department declines to include this language in either of the relevant sections, since the rules do not address the specific evaluation criteria to be used in selecting projects under the TAP. However, the issue of in-kind contributions has been addressed in the revisions to §11.306 as described above.

Comment: Priority consideration should be given to TE/TAP projects that were previously selected for funding but were unable to advance to construction within the required three-year period.

This comment was received from the City of Houston.

Response: The department declines to include this language, since the rules do not address the specific evaluation criteria to be used in selecting projects under the TAP. However, the agency may consider this approach when developing the selection criteria to be used during future program calls.

Comment: Do not establish a mechanism that could eliminate a project after it has gone through the local process and been submitted to the department approval process. One letter of opposition from a local authority should not be enough to eliminate a project.

This comment was received from BikeTexas. In addition, 72 comments of a similar nature were received from members of the general public.

Response: The department disagrees with this approach and is not revising the language contained in §11.315(a). The department believes that lack of local support will ultimately have a detrimental effect on the progress of the project. Even though evidence of local support is required as part of the nomination

package, circumstances may change during the period of time between selection of the project and the execution of the local agreement. The TE Program rules contained similar language, so project sponsors should be familiar with the department's expectations related to the continued support of local officials.

Comment: Extend the period of time for awarding a construction contract or starting construction from three to five years. Allow up to two years for executing a local agreement.

This comment was received from the City of Houston.

Response: The department disagrees with this approach and is not revising the language contained in §11.315(b). The success of the TAP depends on the timely implementation of selected projects. The department believes that three years is a sufficient amount of time for the project sponsor to take the necessary steps to pursue construction of the project. Further, one year is a sufficient amount of time for the project sponsor to enter into the required agreement. The TE Program rules contained this type of language, so project sponsors should be familiar with the department's expectations in this regard.

Comment: Expand the process used to support public discourse on potential projects.

This comment was received from one member of the general public.

Response: The department disagrees with this approach and declines to address this issue in the TAP rules. The department does not want to create a rigid process for local entities with regard to the development of TAP projects. Local entities, which are the project sponsors, have the discretion to expand the process for public discourse during project development activities as they wish.

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTE

Title 23, United States Code, §213.

#### §11.300. Purpose.

The sections under this subchapter prescribe the policies and procedures for the implementation and administration of the Transportation Alternatives Program (TAP), as authorized by 23 U. S. C. §213.

#### §11.301. Definitions.

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

- (1) Commission--Texas Transportation Commission.
- (2) Department--Texas Department of Transportation.
- (3) Executive director--The executive director of the Texas Department of Transportation or his or her designee.
- (4) FHWA--Federal Highway Administration.
- (5) Local agreement--An agreement between the project sponsor and the department which includes a commitment for the required local funding, describes the total scope and course of project activities, and outlines the responsibilities and duties of the participants.

(6) Metropolitan planning organization (MPO)--The organization or policy board of an organization created and designated under 23 U. S. C. §134, and 49 U. S. C. §5303, to make transportation planning decisions for the metropolitan planning area and carry out the metropolitan planning process.

(7) Project--An undertaking to implement or construct an eligible activity at a specific location or locations, or, if the context so implies, the particular activity so implemented or constructed.

(8) Project sponsor--An eligible entity as described by 23 U. S. C. §213, that nominates a particular project for consideration, exercises jurisdiction over the geographic area in which that project is located, and commits to the project's development, implementation, construction, maintenance, management, and financing.

(9) State--The State of Texas or any of its political subdivisions.

(10) Statewide Transportation Improvement Program (STIP)--A four year short-range program developed by the department as a compilation of all metropolitan transportation improvement programs, together with rural transportation improvement programs, that include recommendations from rural planning organizations and department districts for the areas of the state that are outside of the boundaries of a metropolitan planning organization, including transportation between cities.

(11) Surface transportation system--An interconnected surface transportation network for moving people and goods using various combinations of transportation modes.

(12) Transportation Improvement Program (TIP)--A short-range program developed by each metropolitan planning organization in cooperation with the department and public transportation operators that covers a four-year period and contains a prioritized listing of all projects proposed for federal funding and regionally significant projects proposed for state, federal, and local funding in a metropolitan area.

#### §11.302. Program Administration.

(a) The state is required to suballocate, in accordance with 23 U.S.C. §213, a part of its TAP apportionment to urbanized areas with populations over 200,000.

(b) Each MPO serving an urbanized area with a population over 200,000 shall implement the TAP for the award of funds suballocated within such area. Section 11.303 of this subchapter applies only to the use of those TAP funds.

(c) For TAP funds not covered by subsection (b) of this section, the commission will select projects through a competitive process administered by the department. Sections 11.304 - 11.317 of this subchapter apply only to the use of those TAP funds.

#### §11.303. Project Selection and Implementation by MPOs.

(a) This section applies only to an MPO serving an urbanized area with a population over 200,000 and the award of TAP funds suballocated for such an urbanized area.

(b) The MPO, in consultation with the department, shall develop a competitive process to allow project sponsors to submit applications for funding under the TAP.

(c) The MPO will coordinate determinations regarding project eligibility, subject to audit by the FHWA.

(d) Projects, or substantially similar projects, submitted during a program call administered by the MPO are not eligible for consideration under a program call administered by the department.



(e) Following the conclusion of the competitive process, the MPO shall provide to the department a list of all projects submitted during the program call on which the selected projects are identified, and immediately shall begin the process required to include the selected projects in its TIP.

(f) The MPO will conduct project selection and implementation in accordance with all applicable federal and state laws and regulations.

(g) If a project is located on state right-of-way, the project sponsor is responsible for securing a land-use permit from the department prior to construction.

*§11.304. Eligible Activities.*

(a) During a program call administered by the department, TAP funds may be awarded for any of the following activities:

(1) construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990;

(2) construction of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs;

(3) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users; and

(4) construction of infrastructure-related projects to improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.

(b) A project that will require the acquisition of real property through the exercise of eminent domain or condemnation is not eligible for participation in the TAP.

(c) Whether proposed as an independent project or as an element of a larger transportation project, the project must be limited to a logical unit of work and be constructible as an independent project.

*§11.305. Allowable Costs.*

(a) Costs are allowable only if they are necessary construction-related project expenditures that are eligible for reimbursement under applicable statutes and regulations.

(b) The costs of preliminary engineering (including planning, design, and plans, specifications, and estimates) are not allowable costs.

(c) Eligible pre-construction costs incurred by the department are reimbursable. All other pre-construction costs are the responsibility of the project sponsor.

(d) Expenditures for routine operation and maintenance are not allowable costs unless specifically allowed under the individual federal category for which the project qualifies.

*§11.306. Local Funding Match.*

(a) The local funding match is a cash match or in-kind contribution provided by or through the project sponsor. An in-kind contribution may only include actual and documented pre-construction or

construction-related costs previously incurred by the project sponsor that are otherwise eligible for reimbursement under applicable statutes and regulations.

(b) Funds from other federal programs may be used as a local funding match only when specifically authorized by federal law or regulation.

(c) Donated services may not be accepted as a local funding match, but may be used to reduce the overall cost of the project.

(d) If a project selected by the commission is administered by the department, the project sponsor must provide the cash portion of the local funding match prior to the commencement of project activities.

*§11.307. Call for Nominations.*

(a) The department will issue a notice of a call for nominations by publication in the *Texas Register*.

(b) The notice will include information regarding the content of the nomination package, the procedures applicable to the program call, and the specific evaluation criteria to be used during the project selection process.

(c) All or a portion of a call for nominations may be designated for a particular eligible activity.

*§11.308. Nomination Package.*

(a) To nominate a project during a program call administered by the department, the project sponsor must submit its nomination in the form prescribed by the department.

(b) The nomination package must present persuasive evidence of support for the proposed project from the communities in which it would be implemented and include a commitment to provide a local funding match of at least 20% of the allowable costs of the project.

(c) If the project is located in a county that has been certified by the commission as an economically disadvantaged county, the nomination package may include a request for adjustment to the minimum local funding match requirement. For those projects in which the commission is authorized by law to provide state cost participation, the department may adjust the amount required by subsection (b) of this section.

(d) A complete nomination package must be received by the department no later than the specified deadline published in the *Texas Register*. A nomination package that fails to include any of the items specified in this subsection or the respective program call is considered to be incomplete and will not be considered for funding.

*§11.309. Project Screening and Evaluation.*

(a) The executive director will appoint a project evaluation committee consisting of department staff to review, evaluate, and make recommendations on projects submitted during a program call administered by the department.

(b) The committee will screen each project to determine whether it is eligible for funding under applicable federal and state law and whether it meets technical standards established by applicable law and accepted professional practice.

(c) The committee will evaluate the benefits of each project that is determined to be eligible under subsection (b) of this section or §11.310 based on the specific selection criteria set forth in the program call.

(d) The committee will provide project selection recommendations and supporting documentation to the director of the division of the department responsible for administering the TAP.

(e) The director of the division responsible for administering the TAP will provide a list of recommended projects to the commission for consideration.

*§11.310. Finding of Ineligibility; Request for Reconsideration.*

(a) The department will by certified mail, return receipt requested, notify the project sponsor of each ineligible activity proposed and the reason for the determination.

(b) A request for reconsideration of a finding of ineligibility may be initiated only by a letter from the nominating entity to the executive director setting forth reasons in support of a finding of eligibility. The letter requesting reconsideration must be received by the department no later than 15 days after the nominating entity received the department's notification, as established by the return receipt.

(c) The determination of the executive director in response to the request for reconsideration is final.

*§11.311. Selection of Projects by the Commission.*

(a) The commission, by written order, will select projects for funding under the TAP based on:

(1) recommendations from the director of the division responsible for administering the TAP;

(2) the potential benefit to the state of the project; and

(3) whether the project enhances the surface transportation system.

(b) The commission is not bound by project selection recommendations provided by the department.

(c) The department will notify the project sponsor of the selection.

(d) The commission will specify a fixed amount of TAP funds for each project. Project costs in excess of this amount are the responsibility of the project sponsor. The project sponsor may seek additional funds through the TAP in subsequent program calls.

(e) A project that is not selected must be resubmitted to receive consideration during subsequent program calls.

*§11.312. Inclusion of Selected Projects in Planning Documents.*

(a) If a project selected by the commission is to be implemented in a metropolitan area, the department will request that the MPO for that area immediately begin the process required to include the selected project in its TIP.

(b) The department will also immediately begin the process required to include all selected projects in the STIP.

*§11.313. Project Implementation.*

(a) The project sponsor will implement or arrange for implementation of each project selected by the commission in accordance with statutory requisites and contracting procedures applicable to the type and character of the project. The department, in its sole discretion, may agree to implement a project on behalf of a project sponsor.

(b) All projects must be developed:

(1) to current standards and specifications established or recognized by the federal government and the department; and

(2) in accordance with this subchapter.

(c) All project sponsors must enter into a local agreement and comply with all federal and state procedures and requirements applicable to development of federal-aid transportation projects.

(d) Before funding any construction activities, the department will ensure that required opportunities for public involvement have

been provided and proper environmental documentation has been completed.

(e) Funds from other federal programs may be used only when specifically authorized by federal law or regulation. Private cash donations may be accepted if authorized by law.

(f) Any change in the scope of work that was specified in the nomination package and approved by the commission must have the advance written approval of the executive director.

(g) The department is responsible for the inspection and final acceptance of all projects selected by the commission and for certification of project completion.

(h) If the project sponsor does not complete the project as originally approved by the commission, the department may seek reimbursement of the expended federal funds from the sponsor.

*§11.314. Payment of Costs.*

(a) The department will submit all requests for reimbursement of allowable costs to FHWA.

(b) A project sponsor must use the forms and procedures specified by the department to request reimbursement of allowable costs incurred.

(c) For locally administered projects, the entire project cost is borne by the project sponsor until reimbursement can be obtained from FHWA for eligible activities.

(d) Costs incurred prior to the inclusion of the project in the STIP, execution of the local agreement, or prior to federal and state approval and authorization to proceed are not eligible for reimbursement.

*§11.315. Elimination of Project from the TAP.*

(a) A project will be eliminated from participation in the TAP if at any time prior to the execution of the local agreement, the governing body of a municipality or county in which project activities are proposed, by resolution, order, or other official action, notifies the department of its opposition to the project.

(b) The executive director may eliminate a project or a portion of a project from participation in the TAP if at any time:

(1) the project sponsor fails to satisfy any requirement of this subchapter;

(2) implementation of the project would involve significant deviation from the activities as proposed in the nomination package and approved by the commission;

(3) the project sponsor withdraws from participation in the project;

(4) a construction contract has not been awarded or construction has not been initiated within three years after the date that the commission selected the project;

(5) a local agreement is not executed within one year after the date that the commission selected the project; or

(6) the executive director determines that federal funding may be lost because the project has not been implemented or completed.

*§11.316. Project Transfer; Approval of Change.*

(a) If at any time legislative action requires transfer of the project to another entity, the department may terminate the existing project agreement and execute an agreement with the responsible entity.

(b) A transfer under subsection (a) of this section must receive approval from FHWA.

*§11.317. Maintenance and Operation; Dedication for Public Use.*

(a) A project selected by the commission shall be maintained and operated for the purpose for which it was approved and funded and for a period of time that is commensurate with the amount of federal investment in the project.

(b) A project selected by the commission shall be dedicated for public use for the greater of:

(1) a period that is commensurate with the amount of federal investment in the project; or

(2) 10 years, if the amount of federal investment in the project is \$1 million or less, or 20 years, if the amount of federal investment is more than \$1 million.

(c) If at any time the project sponsor can no longer maintain and operate the project for its intended purpose, the sponsor will return the federal share used for the project in accordance with current deferral recapture procedures.

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 September 22, 2014.

TRD-201404508

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 12, 2014

Proposal publication date: July 11, 2014

For further information, please call: (512) 463-8683



## CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

### SUBCHAPTER D. TRANSPORTATION FUNDING

#### 43 TAC §16.153, §16.154

The Texas Department of Transportation (department) adopts amendments to §16.153 and §16.154, concerning Transportation Funding. The amendments to §16.153 and §16.154 are adopted without changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5330) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

The Transportation Alternatives Program (TAP) was created by the Moving Ahead for Progress in the 21st Century Act (also known as MAP-21). The TAP provides federal funding for a variety of alternative transportation projects, many of which were previously eligible for funding under separate programs. The TAP is contained in Title 23, United States Code, §213.

The amendments to §16.153, Funding Categories, and §16.154, Transportation Allocation Funding Formulas, are necessary to implement the TAP as authorized by federal law. The TAP re-

places the Transportation Enhancement Program, which is currently referenced in the amended sections.

Amendments to §16.153, Funding Categories, remove the reference to the Safe Routes to School Program from Category 8, since funding for eligible projects under that program is now available through the TAP. In addition, the title and description of Category 9 has been revised to reference the TAP, as contained in Chapter 11, Subchapter F, of the department's administrative rules.

Amendments to §16.154, Transportation Allocation Funding Formulas, clarify the new funding distributions applicable to the TAP. Specifically, the formula allocation for Category 9 in subsection (a)(6) has been revised to provide that a portion of the funds will be allocated to metropolitan planning organizations (MPOs) serving urbanized areas with populations over 200,000 based on their relative share of population, unless the Federal Highway Administration approves a joint request from the department and the MPO to use other factors in determining the allocation. In addition, the non-formula allocation for Category 9 in subsection (c)(4) has been revised to provide that of the remaining funds in the category, a portion will be allocated to certain areas of the state, based on their relative share of population, and a portion may be allocated in any area of the state or transferred to other eligible federal programs as authorized by law. This funding methodology is consistent with the provisions of MAP-21 and associated federal guidelines concerning the TAP. In addition, "other eligible entity" has been added in subsection (c) to the list of entities that may receive funding, since that terminology is used in federal law.

#### COMMENTS

Overview: The department received a total of 545 comments on the proposed amendments. Of those comments, one related to the specific language of an allocation formula and 544 related to transferring funds from the TAP and the use of TAP funds for bicycle and pedestrian projects.

The department received comments from the City of Houston, BikeTexas, representatives of BikeHouston, the agency's Bicycle Advisory Committee and members of the general public.

Comment: Proposed §16.154(a)(6) should be revised to state "a portion but no less than one-half of the funds in this category will be allocated to MPOs."

This comment was received from the City of Houston.

Response: The department disagrees with this comment and is not including the requested language because it is inconsistent with MAP-21 and the associated federal guidelines. Currently, one-half of the state's TAP apportionment must be allocated based on population; specifically, to urbanized areas with populations over 200,000, urban areas with populations of 5,001 to 200,000 and areas with populations of 5,000 or less. As such, MPOs serving urbanized areas with populations over 200,000 will only receive a percentage of the total amount of funding that is allocated based on population. The ratios used in determining the amount of funding allocated to each individual MPO are provided by the Federal Highway Administration.

Comment: Do not transfer any funds from TAP and use the federal funding that is available for use in any area of the state for bicycle and pedestrian projects.

This comment was received from BikeTexas, two representatives of BikeHouston and the department's Bicycle Advisory

Committee. In addition, 540 comments of a similar nature were received from members of the general public.

Response: The department disagrees with this approach and is not revising the language contained in §16.154(c)(4). The department notes that the option to transfer TAP funds to other eligible programs is consistent with MAP-21 and the associated federal guidance. The transfer language is designed to provide maximum flexibility for the Texas Transportation Commission (commission) in determining how federal funds will be used, in order to meet transportation goals for the state.

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.991, which requires the commission to adopt rules that define program funding categories, and Transportation Code, §201.996, which requires the commission to specify the formulas for allocating funds by rule.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 201, Subchapter P. Title 23, United States Code, §213.

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 September 22, 2014.

TRD-201404509

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 12, 2014

Proposal publication date: July 11, 2014

For further information, please call: (512) 463-8683



## CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) adopts amendments to §§21.31 - 21.40, concerning Utility Accommodation, and new §§21.961 - 21.972, concerning Leasing of Right of Way to Saltwater Pipeline Operators. The amendments to §§21.31 - 21.39; and new §21.961, §21.962, and §§21.964 - 21.972 are adopted without changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5333) and will not be republished. The amendments to §21.40 and new §21.963 are adopted with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5333), and will be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

The Texas Department of Transportation adopts new amendments concerning the implementation of Senate Bill 514, 83rd Legislature, Regular Session, 2013, which adds Subchapter T of the Natural Resources Code §§91.901 - 91.905, and authorizes a saltwater pipeline operator to install, maintain, and operate a pipeline through, under, along, across, or over a public road, by lease agreement and other conditions set forth by

the Texas Transportation Commission. The goal of the bill is to encourage the use of state right of way and the construction of saltwater pipeline facilities as a mechanism of transport for this saltwater. These rule amendments add new Subchapter R, Leasing of Right of Way to Saltwater Pipeline Operators, to 43 TAC Chapter 21 (§§21.961 - 21.972) that sets forth the leasing requirements. Additionally, the rule amendments make minor and non-substantive changes to §§21.31 - 21.40 in Chapter 21, Subchapter C, Utility Accommodations, to modify definitions and terms of relocation for saltwater pipeline facilities in conformance with Senate Bill 514.

Amendments to §21.31, Definitions, add definitions for "saltwater", "saltwater pipeline facility", and "saltwater pipeline operator." This section also broadens other definitions to include saltwater and saltwater pipeline facilities. This section expands the definition of a private utility to include saltwater pipeline facilities while specifically excluding saltwater pipeline facilities from the definition of a public utility.

Amendments to §21.32, Purpose, clarify that the subchapter applies to utility facilities within the state highway system's right of way.

Amendments to §21.33, Applicability, specify the facilities to which the subchapter applies.

Amendments to §21.34, Scope, clarify that subchapter governs matters concerning accommodation, location, and methods for the installation, adjustment, relocation, and maintenance of "utility facilities on state highway rights of way" rather than "utilities on state highway rights of way." The term "utility" is defined as an entity that owns a utility facility, which is also a defined term.

Amendments to §21.35, Exceptions, correct the usage of the terms "utility" and "utility facility" within that section.

Amendments to §21.36, Rights of Utilities, provides that, in accordance with Transportation Code, §91.902, a saltwater pipeline operator may place a saltwater pipeline facility over, under, or across a highway, subject to highway purposes and may be allowed to place such a facility longitudinally within a highway right of way, but only by lease.

Amendments to §21.37, Design, provide consistency in the usage of the term "utility facility." The amendments also clarify that permission from the department is required to attach any utility facility to the structure of a bridge that is on the state highway system.

Amendments to §21.38, Construction and Maintenance, provide consistency in the usage of the terms "utility facility" and "high-pressure pipeline."

Amendments to §21.39, Ownership, Function, Abandonment, and Idling of Facilities, require the operator of a saltwater pipeline facility located by lease within the state's right of way to obtain the department's written approval before transferring ownership of the facility. The amendments also provide consistency in the usage of the term "utility facility."

Amendments to §21.40, Underground Utilities, provide consistency in the usage of the terms "utility," "utility facility," and the various pipeline terms.

Amendments add new Subchapter R to 43 TAC Chapter 21. The new subchapter consists of §§21.961 - 21.972.

New §21.961, Purpose, provides that highway right-of-way not being used for highway purposes may be leased to saltwater

pipeline operators. This section also sets forth that new Subchapter R only applies to valid saltwater pipeline operators and not to other permissive uses of the right-of-way.

New §21.962, Definitions, provides the definitions to key terms as used in the subchapter.

New §21.963, Lease of Right of Way for a Saltwater Pipeline Facility, authorizes the director of the right of way division to execute the lease of an area within a right of way for the installation, operation, and maintenance of a saltwater pipeline facility on a finding that: (1) there is sufficient area within the right of way to accommodate the saltwater pipeline facility; (2) the area to be leased will not be needed for highway purposes during the term of the lease; and (3) the lessee's use of the right of way will be consistent with safety, maintenance, operation, and beautification of the state highway system. The section provides that payment for the lease may not be less than fair market value, that costs of administering the lease may be considered in establishing the amount charged for the lease, and that the term of the lease may exceed 10 years only if the lease contains a provision allowing the department to terminate the lease with not more than 12 months' notice.

New §21.964, Lease Request, describes the procedure for each request and outlines the necessary information needed for evaluation of the lease request. The required information must include a description of the saltwater pipeline facility, engineering plans, a description of the highway right-of-way to be leased, and any other information desired by the department.

New §21.965, Lease Agreement, describes the agreement between the department and the saltwater pipeline operator. The agreement must be in writing, executed by the right of way division director, and approved by the Federal Highway Administration. The agreement may not impair the states use of the State's right of way for highway uses. The section specifies that information that is required to be included in the lease, including the term of the lease, the lease payment amounts, and the bond requirements.

New §21.966, Disposition of Payments, declares that all payments received shall be deposited in the state highway fund.

New §21.967, Termination of Lease, outlines the conditions under which an agreement may be terminated and the terms that must be included in the lease concerning termination. The lease may provide the department and the saltwater pipeline operator with specified rights to terminate an agreement with or without cause. The lease also must specify that upon termination the saltwater pipeline operator must remove the saltwater pipeline facility and restore the highway right-of-way, at no cost to the department.

New §21.968, Federal Highway Administration Approvals, clarifies that all matters relating to leasing of all highway right of way are subject to the approval of the Federal Highway Administration.

New §21.969, Use of Right of Way under Lease, declares that the use of leased right of way does not constitute abandonment of the property by the department. This section also declares that the lease of highway right of way does not create a property interest in the lessee.

New §21.970, Clearances, Safety Requirements, and Standards, requires strict adherence to the standards of utility accommodation rules. This section provides that the saltwater pipeline facility may in no way interfere with the safety and free

flow of traffic on the highway facility. The section also sets forth that a saltwater pipeline facility may not adversely affect the use, safety, and appearance of the highway facility.

New §21.971, Marker or Tracking Device, requires department approval of all markers or tracking devices to be located within the highway right of way.

New §21.972, Changes of and Access to Highway Facilities, provides that a saltwater pipeline facility may not require change in alignment of an existing highway facility without department approval. This section also requires that during construction, the saltwater pipeline facility must permit access to the highway facility.

## COMMENTS

Overview: The department received comments from the following: the Texas Oil & Gas Association (TXOGA) and Texas Independent Producers & Royalty Owners Association (TIPRO); Verizon; Southwestern Bell Telephone Company d/b/a AT&T Wireless (AT&T); and the Texas Cable Association (TCA).

Comment: Throughout the preamble and rule, TXOGA and TIPRO proposed to add "facility" or "facilities" after "saltwater pipeline" for clarity and consistency with legislation.

Response: The department agrees with the comment.

Comment: TXOGA and TIPRO proposed to change "wastewater" to "saltwater" for consistency with legislation in the preamble.

Response: The department agrees with the comment.

Comment: TXOGA and TIPRO proposed to revise the preamble to read "injection and/or disposal wells" for consistency with oil and gas regulatory terminology.

Response: The department agrees with the substance of the comment and has removed the reference to "disposal injection well" in the first paragraph of the preamble.

Comment: TXOGA and TIPRO commented that §21.31(39) needed clarification as to whether this definition excludes saltwater pipeline operators from being considered utilities even if operator is a common carrier in the state of Texas.

Response: The department declines to amend the rule in response to the comment. The definition of a "private utility" is intended to exclude all public utilities and saltwater pipeline operators. A common carrier may still be considered a public utility under this subchapter.

Comment: TXOGA and TIPRO proposed that "and saltwater pipelines" be deleted in §21.33(c). TXOGA and TIPRO explained that high-pressure pipelines are not necessary for all saltwater lines. A saltwater line would already need to meet high-pressure standards if it contains any of the listed materials (e.g. corrosive, caustic, etc.).

Response: The department declines to amend the rule in response to the comment. This requirement is necessary to avoid confusion with respect to the issue of whether saltwater is corrosive, caustic, etc.

Comment: TXOGA and TIPRO commented that the language in §21.39(b) be revised to read as follows (deleted language in brackets; new language in italics): "(b) Saltwater pipeline facility change of ownership. Notwithstanding subsection (a) of this section, if the utility is a saltwater pipeline facility located within the state's right of way by lease, the saltwater pipeline operator shall *notify* [obtain written approval from] the department of *the*

*change in ownership, on a form prescribed by the department, no later than 30 days after the consummation of the transfer.* [before ownership of the saltwater pipeline facility may be transferred.]. TXOGA and TIPRO explained that asset transfers are a common occurrence within the oil and gas industry. These transfers are business sensitive and making them subject to the potential of public review prior to consummation may result in an increased risk to the operator and the elimination of this potential to reduce truck traffic from state roads in the areas contemplated by this legislation.

Response: The department declines to amend the rule in response to the comment. This requirement for written approval is necessary for consistency with the department's existing leasing rules.

Comment: TXOGA and TIPRO commented on §21.40(b)(1)(F)(2) which does not exist. The comment was meant for §21.40(b)(2) and proposed that "and saltwater pipelines" be deleted. TXOGA and TIPRO explained that it is not necessary to add saltwater pipelines. A saltwater line would already need to meet high-pressure standards if it contains any of the listed materials (e.g. corrosive, caustic, etc.).

Response: The department declines to amend the rule in response to the comment. This requirement is necessary to avoid confusion with respect to the issue of whether saltwater is corrosive, caustic, etc.

Comment: TXOGA and TIPRO commented that §21.963(b) should include a reference to the mechanism or method to determine fair market value for the lease of the premises. TXOGA and TIPRO explained by including a reference to the mechanism or method to determine fair market value for the lease of the premises, all parties will be aware of same and discussions and consternation as to the valuation should be minimized, thus increasing operational efficiency and timing.

Response: The department declines to amend the rule in response to the comment. The department is required to determine fair market value when leasing state property. The department may utilize any one or more of the many available value considerations for this determination.

Comment: TXOGA and TIPRO commented that the phrase "after 10 years" be inserted for clarity between the words "lease" and "with" in §21.963(c).

Response: The department agrees with the comment.

Comment: TXOGA and TIPRO commented that subsection (c) be deleted in §21.964(c). TXOGA and TIPRO explained that the request for a title opinion to determine property rights of others exceeds intent of SB 514 and the department's authority.

Response: The department declines to amend the rule in response to the comment. The requirement of a title opinion is within the department's regulatory authority and necessary for consistency with the department's existing leasing rules.

Comment: TXOGA and TIPRO proposed that in §21.965(d) a new paragraph (10) be added to read as follows and renumber subsequent subsections: "(10) a requirement that the department shall provide written notice to lessee within 10 days of any alleged breach of lease by the lessee; and lessee shall have 10 additional days to respond regarding allegations and lessee shall provide a proposal and timeline for remediating the breach;". TXOGA and TIPRO explained that lessee should be

notified of alleged breaches and given opportunity to remediate prior to forfeiture.

Response: The department declines to amend the rule in response to the comment. Section 21.965(d) is consistent with the department's existing leasing rules.

Comment: TXOGA and TIPRO commented that §21.965(d)(10) be revised to add the following: "a statement that on failure to respond to notice of alleged breach or failure to remediate breach within timeline provided to the department, lessee:". TXOGA and TIPRO explained that this will add consistency with new §21.965(d)(10) proposed in their comments.

Response: The department declines to amend the rule in response to the comment. Section 21.965(d) is consistent with the department's existing leasing rules.

Comment: TXOGA and TIPRO proposed that §21.965(d)(15) revised to read as follows (renumbering occurred from proposed new (10)): "(16) A statement that neither the lease nor the premises shall be transferred, assigned, or conveyed to another party without prior written notice provided to the district administrator within 30 days after the transfer, assignment or conveyance of the lease on a form prescribed by the department;". TXOGA and TIPRO explained that asset transfers are a common occurrence within the oil and gas industry. These transfers are business sensitive and making them subject to the potential of public review prior to consummation may result in an increased risk to the operator and the elimination of this potential to reduce truck traffic from state roads in the areas contemplated by this legislation.

Response: The department declines to amend the rule in response to the comment. The requirement for prior written approval is necessary for consistency with the department's existing leasing rules.

Comment: AT&T and Verizon commented that the proposed rules would authorize a saltwater pipeline operator to apply for a lease permitting it to place its facilities in the state right of way, but would not expressly address the operator's duties with respect to other utilities. Verizon proposed that a subsection be added to §21.965(d) providing a requirement that "owners of existing utilities have occupancy rights superior to those of the saltwater pipeline operator." This subsection would prevent facilities conflicts, increase safety and allow for maintenance activities to be completed.

Response: The department declines to amend the rule in response to the comment. The objective of the comment is currently provided for in Subchapter C of these rules.

Comment: AT&T and Verizon commented that the proposed rules would authorize a saltwater pipeline operator to apply for a lease permitting it to place its facilities in the state right of way, but would not expressly address the operator's duties with respect to other utilities. Verizon proposed that a subsection be added to §21.965(d) providing a requirement that "saltwater pipelines must be installed at least 12 inches above or below existing utility facilities where they are in the same vicinity." This subsection would prevent facilities conflicts, increase safety and allow for maintenance activities to be completed.

Response: The department declines to amend the rule in response to the comment. The objective of the comment is currently provided for in Subchapter C of these rules.

Comment: AT&T and Verizon proposed that a provision be added to the proposed rules stating that if the department determines that an existing utility must be moved to accommodate a saltwater pipeline, the saltwater pipeline operator must pay for all costs associated with the relocation.

Response: The department declines to amend the rule in response to the comment. The objective of the comment is currently provided for in Subchapter C of these rules.

Comment: TCA stated that §21.40(f)(2)(A) of the rules deals with underground communications lines and currently provides that the "owner/operator of" a fiber optic facility may reduce the depth of cover for installed fiber if it agrees to waive a claim for damages and indemnify the department. The proposed amendments would alter this language by substituting the phrase "utility that owns" for the term "owner/operator." The revised language will create confusion and likely result in some unnecessary construction delays because fiber, unlike a saltwater pipeline, is physically divisible. Fiber installations consist of multiple strands of glass contained in conduit, with several such conduits placed in an underground trench. Often, fiber installation is a shared project undertaken by two or three communications service providers. For any construction, but particularly for construction involving relocation of fiber to accommodate upgrades and expansion of public right-of-way, identifying ownership will add a level of complexity that is unnecessary. The original language of the rule worked well. It allowed either the owner or the operator of fiber to decide whether to agree to a waiver and indemnification of the department. TCA understands that the proposed rule amendments were intended to make a non-substantive change with respect to §21.40(f)(2)(A) and requirements applicable to communications service providers and fiber installations. Nonetheless, the change in wording is likely to have negative consequences. TCA urged the department to modify the proposed amendment to this subsection of the rule so that the phrase reads "utility that is the owner/operator."

Response: The department agrees with the comment.

## SUBCHAPTER C. UTILITY ACCOMMODATION

### 43 TAC §§21.31 - 21.40

#### STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department; and more specifically, Transportation Code, §202.052 and §202.053, which authorize the department to lease a highway right of way; and Natural Resources Code, §91.902, which authorizes the commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

#### CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

#### §21.40. *Underground Utilities.*

##### (a) General.

##### (1) Encasement.

(A) Underground utility facilities crossing the highway shall be encased in the interest of safety, protection of the utility, protection of the highway, and for access to the utility facility. Casing shall

consist of a pipe or other separate structure around and outside the carrier line. The utility must demonstrate that the casing will be adequate for the expected loads and stresses.

(B) Casing pipe shall be steel, concrete, or plastic pipe as approved by the district, except that if horizontal directional drilling is used to place the casing, high-density polyethylene (HDPE) pipe must be used in place of plastic pipe.

(C) Encasement may be of metallic or non-metallic material. Encasement material shall be designed to support the load of the highway and superimposed loads thereon, including that of construction machinery. The strength of the encasement material shall equal or exceed structural requirements for drainage culverts and it shall be composed of material of satisfactory durability for conditions to which it may be subjected. The length of any encasement under the roadway shall be provided from top of backslope to top of backslope for cut sections, five feet beyond the toe of slope for fill sections, and five feet beyond the face of the curb for curb sections. These lengths of encasement include areas under center medians and outer separations, unless otherwise specifically addressed in subsections (b) - (f) of this section.

(D) The department will provide an example graphic upon request of a typical section showing encasement lengths.

(2) Depth. Where placements at the depths in this section are impractical or where unusual conditions exist, the department may allow installations at a lesser depth, but will require other means of protection, including encasement or the placement of a reinforced concrete slab. Reinforced concrete slabs or caps shall meet the following standards:

(A) width--five feet, or three times the diameter of the pipe, whichever is greater;

(B) thickness--six inches, at minimum;

(C) reinforcement--#4 bars at 12 inch centers each way or equivalent reinforcement; and

(D) cover--no less than six inches of sand or equivalent cushion between the bottom of the slab/cap and the top of the pipe.

##### (3) Manholes.

(A) Manholes shall not be installed unless necessary for installation and maintenance of underground lines. In no case shall a manhole be placed or permitted to remain in the pavement or shoulder of a highway. However, on noncontrolled access highways in urban areas, the district may, in its discretion, allow existing lines to remain in place under existing or proposed highways. In these cases, manholes may remain in place or be installed under traffic lanes of low volume highways in municipalities only if measures are taken to minimize the installations and to avoid locating them at intersections or in wheel paths.

(B) To conserve space, a manhole's dimensions shall be the minimum acceptable by appropriate engineering and safety standards. The only equipment that may be installed in manholes located on the right of way is that essential to the normal flow of the utility, such as circuit reclosers, cable splices, relays, valves, and regulators. Other equipment, such as substation equipment, large transformers, and pumps, shall be located outside the right of way.

(C) Inline manholes are the only type permitted within the right of way. The width dimensions shall be no larger than necessary to hold equipment involved and to meet safety standards for maintenance personnel. Outside width, the dimension of the manhole perpendicular to the highway, shall not exceed ten feet, with the length to be held to a reasonable minimum. The outside diameter of the manhole

chimney at the ground level shall not exceed 36 inches, except that if the utility demonstrates necessity, the district may, at its discretion, allow an outside diameter of up to 50 inches. The top of the roof of the manhole shall be five feet or more below ground level.

(D) All manhole covers shall be installed flush with the ground or pavement structure. In order to minimize vandalism, manhole covers must weigh at least 175 pounds. Manhole rings and covers must be designed for HS-20 loading.

(E) Manholes shall be straight, inline installations with a minimum overall width necessary to operate and maintain the enclosed equipment. The utility is responsible for any adjustment of the manhole rim that may be needed to meet grade changes.

(4) Installation.

(A) Utility facilities placed beneath any existing highway shall be installed by boring or tunneling. Jacking may not be used unless approved in writing by the district. The district may require encasement of lines installed by boring or jacking. The use of explosives is prohibited. Pipe bursting or fluid/mist jetting may be allowed at the discretion of the department.

(B) For rural, uncurbed highway crossings, all borings shall extend beneath all travel lanes. Unless precluded by right of way limitations, the following clearances are required for rural highway crossings:

(i) 30 feet from all freeway mainlanes and other high-speed (exceeding 40 mph) highways except as indicated in clauses (ii) - (iv) of this subparagraph;

(ii) 16 feet for high-speed highways with current average daily traffic volumes of 750 vehicles per day or fewer;

(iii) 16 feet for ramps; or

(iv) ten feet for low-speed (40 mph or less) highways.

(C) Annular voids greater than one inch between the bore hole and carrier line (or casing, if used) shall be filled with a slurry grout or other flowable fill acceptable to the department to prevent settlement of any part of the highway facility over the line or casing.

(D) For curbed highway crossings, all borings shall extend beneath travel and parking lanes and extend beyond the back of curb, plus:

(i) 30 feet from facilities with speed limits of 40 mph or greater; or

(ii) five feet from facilities with speed limits of less than 40 mph or less, plus any additional width necessary to clear an existing sidewalk.

(E) Where circumstances necessitate the excavation of a bore pit or the presence of directional boring equipment closer to the edge of pavement than set forth in paragraphs (2) or (3) of this subsection, approved protective devices shall be installed for protection of the traveling public in accordance with §21.38 of this subchapter (relating to Construction and Maintenance). Bore pits shall be located and constructed in such a manner as not to interfere with the highway structure or traffic operations. If necessary, shoring shall be utilized for the protection of the highway, and must be approved by the district.

(F) All traffic control devices, including signs, markings, or barricades used to warn motorists and pedestrians of the construction activity must conform to the TMUTCD.

(G) When trenching longitudinally, backfill or stabilized sand shall be compacted to densities equal to that of the surrounding soil.

(5) Nonmetallic pipe detection. Where nonmetallic pipe is installed, whether longitudinally or at a crossing, a durable metal wire or other district-approved means of detection shall be concurrently installed.

(6) Unsuitable conditions. The following conditions are generally unsuitable or undesirable for pipeline crossings and shall be avoided:

(A) deep cuts;

(B) locations near footings or bridges and retaining walls;

(C) crossing intersections at-grade or ramp terminals;

(D) locations at cross-drains where the flow of water may be obstructed;

(E) locations within basins or underpasses drained by pump if the pipeline carries a liquid or liquefied gas; or

(F) terrain where minimum depth of cover would be difficult to attain.

(7) Clearances. Except as specified in this subchapter, there shall be a minimum of 12 inches vertical and horizontal clearance between a new utility facility and an existing utility facility, unless a greater clearance is required by the district. However, if an installation of another utility facility or highway feature cannot take place without disturbing an existing utility facility, the minimum clearance will be 24 inches.

(8) Crossings. A district may require crossings with no longitudinal connections to be encased within the right of way.

(9) Drainage easements. Where it is necessary for pipelines to cross department drainage easements outside of the right of way, the depth of cover shall be as specified for each type of utility facility. In cases where soil conditions are such that erosion might occur, or where it is not feasible to obtain specified depth, it shall be the responsibility of the utility to install retards, energy dissipators, encasement, or concrete or equivalent slabs/caps over the pipe, as approved by the department. Where grades on the pipelines must be maintained, such as gravity flow sewer lines, each case will be reviewed on an individual basis, keeping in mind that the main purpose of the channel is to carry drainage water and that this flow must not be obstructed. The utility is responsible for obtaining any other approvals to occupy the drainage easement.

(10) Existing installations in a highway or transportation project. At the district's discretion, existing longitudinal utility facilities in a highway or transportation project that otherwise meet the requirements of this subchapter may remain in place if the utility facilities:

(A) can be maintained in accordance with §21.37(b)(2) of this subchapter (relating to Design); and

(B) are not located under the pavement structure or shoulder of any proposed or existing highway.

(11) Markers. If a high pressure pipeline crosses a highway, the utility shall place a readily identifiable, durable, and weather-proof marker over the centerline of the pipe at each right of way line. Readily identifiable, durable, and weatherproof markers shall be placed at a minimum distance of 500 feet or line of sight at the right of way line for pipelines installed longitudinally within the right of way. All



markers shall indicate the name, address, emergency telephone number of the utility, and offset from the right of way line. For gas, petroleum, or saltwater pipelines, the pipeline product, operating pressure, and depth of pipe below grade shall also be indicated on the markers. At locations where underground utility facilities have been allowed to cross at an angle other than 90 degrees to centerline, the district may require additional markers in the medians and outer separations of the highway.

(12) Backfilling. Underground utility facility installations shall be backfilled with pervious material and outlets for underdrainage.

(13) Underdrainage. Underdrains shall be provided where necessary. No puddling beneath the highway will be permitted.

(b) Gas and liquid petroleum pipelines and saltwater pipelines.

(1) Low-pressure pipelines.

(A) Depth of cover for crossings. Depth of cover is the depth to the top of the carrier pipe or casing, as applicable. Where materials and other conditions justify, such as on existing pipelines remaining in place, the district may require a minimum depth of cover under the pavement structure of 12 inches or one-half the diameter of the pipe, whichever is greater.

(i) For encased low-pressure gas pipelines, the minimum depth of cover shall be:

(I) 18 inches or one-half the diameter of the pipe, whichever is greater, under pavement structure;

(II) 24 inches outside pavement structure and under ditches (original unsilted flowline); or

(III) 30 inches for unencased sections of encased pipelines outside of pavement structure.

(ii) For unencased low-pressure gas pipelines, the minimum depth of cover shall be:

(I) 60 inches under the pavement surface or 18 inches under the pavement structure for paved areas;

(II) 48 inches outside paved areas and under ditches (original unsilted flowline); or

(III) a lesser depth if authorized by the district where a reinforced concrete slab is used to protect the pipeline.

(B) Depth of cover for longitudinal placement. The minimum depth of cover for longitudinal installations shall be 36 inches.

(C) Encasement. Low-pressure gas pipelines crossing the pavement shall be placed in a steel encasement. The district may waive this encasement requirement if the pipeline is of welded steel construction and is protected from corrosion by cathodic protective measures or cold tar epoxy wrapping, and the utility signs a written agreement that the pavement will not be cut for pipeline repairs at any time in the future.

(D) Vents. One or more vents shall be provided for each casing or series of casings. For casings longer than 150 feet, vents shall be provided at both ends. On shorter casings, a vent shall be located at the high end with a marker placed at the low end. Vents shall be placed at the right of way line immediately above the pipeline, situated so as not to interfere with highway maintenance or be concealed by vegetation, and shall be no greater than six inches in diameter. The owner's name, address, and emergency telephone number shall be shown on each vent.

(E) Plastic lines. Plastic lines shall be encased within the right of way on crossings, and must have at least 30 inches of cover.

(F) Aboveground appurtenances. Except for vents, no above ground utility appurtenances for gas lines shall be permitted within the right of way.

(2) High-pressure pipelines and saltwater pipelines.

(A) Depth of cover for crossings.

(i) Depth of cover is the depth to the top of the carrier pipe or casing, as applicable. Where materials and other conditions justify, such as on existing lines remaining in place, the district may approve a minimum depth of cover under the pavement structure of 12 inches or one-half the diameter of the pipe, whichever is greater. For encased high-pressure pipeline, the minimum depth of cover shall be:

(I) the greater of 18 inches or one-half the diameter of the pipe, under pavement structures;

(II) 30 inches if the line is outside the pavement structure or under a ditch; or

(III) 36 inches for unencased sections of encased lines outside the pavement structure.

(ii) Where a reinforced concrete slab is used to protect the pipeline, the district may authorize a reduction in the depths specified in this section. For unencased high-pressure pipelines, the minimum depth of cover is as follows:

(I) 60 inches under the pavement surface or 18 inches under the pavement structure in paved areas; or

(II) 48 inches if the line is placed outside the pavement structure or under a ditch.

(B) Depth of cover for longitudinal placement. The minimum depth of cover shall be 48 inches.

(C) Encasement. Casing shall consist of a vented steel pipe.

(D) Unencasement.

(i) Where encasement is not employed, the utility shall show that the welded steel carrier pipe will provide sufficient strength to withstand the internal design pressure and the dead and live loads of the pavement structure and traffic. Additional protective measures must include:

(I) heavier wall thickness, higher factor of safety in design, or both;

(II) adequate coating and wrapping;

(III) cathodic protection; and

(IV) the use of Barlow's formula regarding maximum allowable operating pressure and wall thickness, as specified in 49 CFR §192.105.

(ii) Shallow anode bed types exceeding 48 inches in width shall not be permitted in the right of way. All others must have a depth of coverage of at least 36 inches. Deep well anode beds of up to 60 inches in diameter are acceptable. Rectifier and meter loop poles shall be placed at or near the right of way line.

(iii) The minimum length of the additional protection shall be the same as that required for an encased crossing.

(iv) The district may allow existing lines under low-volume highways to remain in place without encasement or extension of encasement if they are protected by a reinforced concrete slab or

equivalent protection or if they are located at a depth of five feet under the pavement structure and not less than four feet under a highway ditch.

(E) Vents. Vents shall be installed at both ends of a casing, regardless of length, with a marker on at least one end. Vents shall be placed at the right of way line immediately above the pipeline, situated so as not to interfere with highway maintenance or be concealed by vegetation. The owner's name, address, and emergency telephone number shall be shown on each vent marker.

(F) Aboveground appurtenances. Aboveground appurtenances, except vents for gas lines, shall not be permitted within the right of way.

(c) Water lines.

(1) Material type. All material types used for water lines shall conform to American Waterworks Association, applicable local requirements, and 30 TAC §290.44(a)(relating to Water Distribution).

(2) Depth of cover. The minimum depth of cover shall be 30 inches, but not less than 18 inches below the pavement structure for crossings.

(3) Encasement. Unless another type of encasement is approved by the district, water lines crossing under paved highways must be placed in a steel encasement pipe within the limits of the right of way. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide. At the district's discretion, encasement under side road entrances may be omitted in consideration of traffic volume, condition of highway, maintenance responsibility, or district practice. Existing water lines 24 inches or greater may be allowed to remain unencased under the pavement of new low volume highways, provided depth and all other requirements of 30 TAC §290.44 are met.

(4) Manholes. The width dimensions shall be no larger than is necessary to hold equipment involved and to meet safety standards for maintenance personnel. The maximum inside diameter of the manhole chimney shall not exceed 48 inches. The outside diameter of the manhole chimney at the ground level shall not exceed 36 inches.

(5) Aboveground appurtenances.

(A) Fire hydrants and valves. When feasible, fire hydrants and blow-off valves are to be located at the right of way line. Fire hydrants shall not be placed in the sidewalk or any closer than five feet from the back of the curb. Valve locations shall be placed so as not to interfere with maintenance of the highway.

(B) Water meters. Individual service meters shall be placed outside the limits of the right of way. Master meters for a point of service connection may be placed in a manhole with a maximum width of 48 inch inside diameter. If additional volume is required, a manhole with a neck of 60-inch depth must be used.

(C) Service lines crossing highway by bore. Lines for customer service that cross the highway may be placed in a high-density polyethylene (HDPE) encasement pipe without joints (rolled pipe).

(d) Nonpotable water control facilities.

(1) Applicability. This subsection applies to agricultural irrigation facilities, water control improvement districts, municipal utility districts, flood control districts, canals, and similar nonpotable water control facilities.

(2) Depth of cover for buried pipe facilities. The minimum depth of cover, regardless of type of pipe used, shall be 30 inches, but not less than 18 inches below any pavement structure.

(3) Encasement for buried pipe facilities. Unless the district approves another type of encasement, all non-potable water control lines crossing under paved highways within the right of way must be placed in a steel encasement pipe. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide.

(4) Location and design requirements. Open ditch facilities and buried pipe facilities designed and constructed in accordance with this subchapter may be installed across the right of way. Longitudinal buried pipe facilities installed within the right of way must conform with §21.41(c) of this subchapter (relating to Overhead Electric and Communication Lines), consistent with the clearances applicable to all roadside obstacles. Open ditch facilities shall not be installed longitudinally within the right of way, nor will any aboveground appurtenances be permitted within the horizontal clearance.

(5) Levee/ditch travel road location. Coordination with and approval by the district is required where levee/ditch travel roads intersect the highway.

(e) Sanitary sewer lines.

(1) Material type. All material types used for sanitary sewer lines shall conform to applicable provisions of 30 TAC Chapter 217 and applicable local requirements.

(2) Depth of cover. The minimum depth of cover shall be 30 inches, but not less than 18 inches below any pavement structure.

(3) Encasement. Pressurized line crossings under paved highways within the limits of the right of way shall be placed in a steel encasement pipe. Gravity flow lines not conforming to the minimum depth of cover shall be encased in steel or concrete. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide.

(4) Manholes. Manholes serving sewer lines up to 12 inches shall have a maximum inside diameter of 48 inches. For lines larger than 12 inches, the manhole inside diameter may be increased an equal amount, up to a maximum diameter of 60 inches. Manholes for large interceptor sewers shall be designed to keep the overall dimensions to a minimum. The outside diameter of the manhole chimney at the ground level shall not exceed 36 inches.

(5) Lift stations. Lift stations and pump stations for sanitary sewer lines exceeding 48 inches inside diameter shall be located outside the limits of right of way.

(f) Electric and communication Lines.

(1) Underground electric lines.

(A) Depth of cover. All underground electric lines placed within the right of way may be installed by direct bury at depths according to the voltage of electric lines as required by the National Electrical Safety Code and as shown in the following chart. Figure: 43 TAC §21.40(f)(1)(A) (No change.)

(B) Encasement. Electric lines crossing the roadway shall be encased in steel or comparable material greater than or equal to that of ductile iron, with satisfactory joints, or materials and designs that will provide equal or better protection of the integrity of the highway system and resistance to damage from corrosive elements to which they may be exposed. The lines shall be buried a minimum of 36 inches under highway ditches, and 60 inches below the pavement structure. Encasement shall be provided as outlined in this section.

(C) Installation. Longitudinal underground electric lines may be placed by plowing or open trench method. All plowing and trenching shall be performed in a uniform alignment with the right

of way. If the installation of the facility is found to deviate from the approved location, the district, at its sole discretion, may require the adjustment of the facility to the approved location. The utility facility shall be located as set forth in §21.37(b) of this subchapter.

(D) Aboveground appurtenances.

(i) Aboveground appurtenances installed as part of an underground electric line shall be located at or near the right of way line, and shall not impede highway maintenance or operations.

(ii) Structures that are larger in plan view than single poles may be placed on the right of way if:

(I) the installation will not hinder highway maintenance operations;

(II) the housing will be placed at or near the right of way line;

(III) the installation will not reduce visibility and sight distance of the traveling public;

(IV) the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement or accommodation of other utility lines is apparent;

(V) the outside width, length (longitudinal with respect to the right of way), and height dimensions of the aboveground portion of the housing do not exceed 36 inches, 60 inches, and 54 inches respectively;

(VI) the supporting slab does not project more than three inches above the ground line, nor extend more than 12 inches on either side of the housing structure; and

(VII) the installation will be compatible with adjacent land uses.

(E) Manholes. Manholes serving electric and communication lines shall conform to the requirements of this section.

(F) Abandonment. Underground electric lines may be abandoned in place at the discretion of the district.

(2) Underground communication lines.

(A) Longitudinal. The minimum depth of cover for cable television and copper cable communications lines shall be 24 inches. The minimum depth of cover for fiber optic facilities shall be 42 inches. If the utility that is the owner/operator of a fiber optic facility waives damages and fully indemnifies the department in a form acceptable to the department, the minimum depth of cover may be reduced to not less than 36 inches.

(B) Crossings.

(i) The minimum depth of cover for cable television and copper cable communication lines shall be 24 inches under ditches or 18 inches beneath the bottom of the pavement structure, whichever is greater.

(ii) The top of the fiber optic facility shall be placed a minimum of 42 inches below the ditch grade or 18 inches below the pavement structure or 60 inches below the top of the pavement surface, whichever is greater. The department may authorize a minimum depth of cover of not less than 36 inches below the ditch grade or 60 inches below the top of the pavement surface, whichever is greater, if the utility waives damages and fully indemnifies the department in a form acceptable to the department.

(iii) The department may require encasement or other suitable protection when necessary to protect the highway facility when the line is located:

(I) at less than minimum depth;

(II) near the footing of a bridge or other highway structure; or

(III) near another hazardous location.

(iv) Unless the line is encased, installation shall be accomplished by boring a hole the same diameter as the line. The annular void between a drilled hole and the line or casing shall be filled with a material approved by the district to prevent settlement of any part of the highway facility over the line or casing.

(C) Installation. Lines may be placed by plowing or open trench method and shall be located on uniform alignment with the right of way and as near as practical to the right of way line to provide space for possible future highway construction and for possible future utility installations.

(D) Multiple conduits.

(i) Shared conduits. When an existing utility rents, leases, or sells conduit usage to another utility, the new utility and the conduit owner must jointly submit a use and occupancy agreement before placement of a new line within the conduit.

(ii) Additional conduits. No more than two additional empty conduits may be added for every full conduit line, unless otherwise approved by the district.

(E) Aboveground appurtenances.

(i) Aboveground pedestals or other utility appurtenances installed as a part of an underground communication line shall be located at or near the right of way line, so as not to impede highway maintenance or operations.

(ii) Large equipment housings. Structures that are larger in plan view than single poles may be placed on the right of way if:

(I) the installation will not hinder highway maintenance operations;

(II) the housing will be placed at or near the right of way line;

(III) the installation will not reduce visibility and sight distance of the traveling public;

(IV) the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement and accommodation of other utility lines is apparent;

(V) outside width, length (longitudinal), and height dimensions of the aboveground portion of the housing do not exceed 36 inches, 60 inches, and 54 inches respectively;

(VI) the supporting slab does not project further than three inches above ground line, nor extend further than 12 inches on either side of the housing structure; and

(VII) the installation will be compatible with adjacent land uses.

(F) Abandonment. Underground communication lines may be abandoned in place at the discretion of the district.

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 September 22, 2014.

TRD-201404510

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 12, 2014

Proposal publication date: July 11, 2014

For further information, please call: (512) 463-8683



## SUBCHAPTER R. LEASING OF RIGHT OF WAY TO SALTWATER PIPELINE OPERATORS

### 43 TAC §§21.961 - 21.972

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§202.052 and 202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

#### CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

§21.963. *Lease of Right of Way for a Saltwater Pipeline Facility.*

(a) The director may execute the lease of the premises for the installation, operation, and maintenance of a saltwater pipeline facility if the director finds that:

- (1) there is sufficient area within the right of way to accommodate the saltwater pipeline facility;
- (2) the area proposed as the premises will not be needed for highway purposes during the term of the lease; and
- (3) the lessee's use of the right of way will be consistent with safety, maintenance, operation, and beautification of the state highway system.

(b) The lessee is required to pay to the department an amount determined by the department that is not less than fair market value for the lease of the premises. The department may consider its costs of administering the lease in establishing the amount charged.

(c) The term of the lease may not exceed 10 years, unless the lease contains a cancellation clause by which the department, in its sole discretion, may terminate the lease after 10 years with not more than 12 months' notice.

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 September 22, 2014.

TRD-201404511

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 12, 2014

Proposal publication date: July 11, 2014

For further information, please call: (512) 463-8683



## CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) adopts amendments to §21.146, §21.187, and §21.189, concerning Regulation of Signs Along Interstate and Primary Highways, and §21.405, concerning Control of Signs Along Rural Roads. The amendments to §21.146, §21.187, §21.189, and §21.405 are adopted with changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4636).

#### EXPLANATION OF ADOPTED AMENDMENTS

The legislature in Transportation Code, §391.002 declared that it is necessary to regulate the erection and maintenance of outdoor advertising to: (1) promote the health, safety, welfare, morals, convenience, and enjoyment of the traveling public; and (2) protect the public investment in the interstate and primary systems. These amendments to existing rules are responsive to numerous comments received by the department from stakeholders that indicated a need to change or clarify rules in 43 TAC Chapter 21, relating to the regulation of signs along roadways in the state. Where applicable, the rules regarding signs along rural roads were modified to maintain consistency with the regulation of signs along interstate and primary highways. Finally, city ordinances may be more restrictive than the department rules.

Amendments to §21.146, "Exempt Signs," add an exemption for a sign that is located on the sign owner's real property, does not provide monetary benefit for the owner or material benefit to a third-party, and is not an election sign. The department set the size limit at 96 square feet to address spacing and safety concerns while accommodating standard material sizes. Section 21.146(c) is amended to clarify that the subsection applies only to an on-premise sign described by §21.147. Based on comments the department has amended the rule to allow a sign qualifying under this exemption to have more than one sign face as long as no more than one sign face fronts a particular direction of travel.

Amendments to §21.187, "Spacing of Signs," clarify spacing requirements between signs, one of which is located inside and the other located outside a city's incorporated limits. There has been confusion concerning which spacing requirements apply. New §21.187(d) provides that, if a sign is located inside the incorporated city limits of a certified city on a freeway primary road, the spacing limit from a sign located outside of incorporated city limits on the same side of the road is 1,500 feet. The spacing limit for such a sign from another sign on the same side of the road that is also inside the incorporated city limits is 500 feet. New §21.187(e) similarly addresses signs on non-freeway primary roads with a 750 foot limit if the other sign is outside of incorporated city limits and a 300 foot limit if the other sign is inside of the incorporated city limits. This change makes it clear

that if one sign is outside incorporated limits of a city then the non-city limit spacing requirements apply.

Amendments to §21.189, "Sign Height Restrictions," address numerous comments received by the department during a previous rule revision that requested a change to its height requirements in Chapter 21, Subchapter I. Draft §21.189(a) proposed a 65 foot height limit based on sign readability studies among other factors. However, based on comments received for this revision the department is not increasing the maximum sign height at this time. The rule does contain changes as to how the sign height will be measured which have been modified to address the change to subsection (a). Section 21.189(e) clarified that the height measurement is from the centerline of the main-traveled way chosen by the sign owner. The rule also clarifies that if the main-traveled way is lower than the ground at the location of the sign structure the sign height will be measured from the ground at the base of the sign structure.

Amendments to §21.405, "Exemptions," track the changes made in Subchapter I, §21.146, and which are described above.

#### COMMENTS

Overview: The department received 941 total comments, 919 addressed the draft change in sign height and 22 addressed the new exemption for non-commercial on-premise signs. The following interested business related groups, sign operators/owners and media consultants, commented positively on the height rule: Acme Partnership, L.P. (representing as well The Sign Company, Inc., Ad Com, L.L.C., SMH DOS Marketing, National Outdoor Advertising, Craig Outdoor, Visible Outdoor, JSL Outdoor); Burkett Outdoor Advertising, L.P.; CBS Outdoor, Inc.; Gilbreath Outdoor Advertising; Hagerman Outdoor Advertising; JGI Outdoor Advertising; Marketing Matters; Metro Outdoor Advertising; Ooh Pitch, Inc. Advertising; Outdoor Advertising Association of Texas; Outdoor Signs; Pearce Outdoor Display; Reagan National Advertising; Rothfelder & Falick, L.L.P.; SignAd Outdoor; Southwest Outdoor Advertising. The following interested entities commented negatively on the height rule: City of San Antonio; Economic Development Commission (Gillespie County); Environmental Tree Committee of the Northwest Austin Civic Association; Friends of the Preserve; Greater Houston Partnership; Green Earth Lighting Co.; Hill Country Alliance; Houston Northwest Chamber of Commerce; Lady Bird Wildflower Center; North Houston Association; San Antonio Conservation Society; Scenic Comal County; Scenic Galveston, Inc.; Scenic Texas; Travis County Audubon Society. The department also received approximately 900 comments from the general public requesting the department not increase the maximum sign height.

Additionally, of the 23 comments on the new exemption found in §21.146 and §21.405, 12 individual citizens supported and Liberty Institute generally supported the new exemption and ten citizens opposed all rule changes, including the changes to §21.146 and §21.405.

A large volume of the comments focused on the new 65 foot limit on sign height. These comments have been grouped for response purposes.

Comment: The Liberty Institute proposed that §21.146(12), regarding the new exempt sign, be modified to increase the number of sign faces to two.

Response: The department agrees that more sign faces could reasonably be accommodated and changed the proposed rule

so that a sign qualifying for the exemption could have no more than a single sign face fronting a particular direction of travel, e.g., back to back sign faces on a bidirectional road. The rule continues to limit any single sign face to no more than 96 square feet.

Comment: The Liberty Institute proposed adding an additional exception as §21.146(13) that would read: "a sign that displays or expresses information in accordance with the sign owner's sincerely held religious belief(s)."

Response: The department disagrees with this proposal and will not be including the requested language. The department believes that the broader language of the current draft better meets the requirements of the U.S. and Texas Constitutions as well as the Religious Freedom Restoration Act of 1993 (RFRA) and the Texas Religious Freedom Restoration Act (TRFRA).

Comment: Acme Partnership, Inc. commented that the draft spacing rule was confusing and singled out electronic signs for special treatment in certified cities. It also proposed amending §21.253 so that the department would not permit electronic signs in certified cities.

Response: The department notes that the draft rule merely formalizes department policy to insure that it comports with federal spacing requirements regarding the spacing of signs within a certified city on a highway or freeway, and spacing within municipalities more generally where signs are not on a highway or freeway. The department agrees that §21.187(e) required a minor re-wording to improve clarity, which it accomplished changing "road" to "highway." Section 21.253 was not proposed for change and therefore, the department may not formally consider this proposal at this time.

Comment: As noted above, the department received over 900 comments on draft §21.189(a), the proposal to increase the allowable sign height to 65 feet. Comments fell into two large groups; generally the industry favored the draft rule and individual citizens and scenic advocacy groups did not. The department received several expert reports. Two reports provided to support the draft rule focused on read time at various speeds and sign heights (International Sign Association (ISA) publication, "The Right Sign for Your Business" and United States Sign Counsel (USSC) publication, "On-Premise Signs Guidelines Standards: Research Based Approach to: Sign Size, Sign Legibility, Sign Height"); these were the same reports that the department had relied on in drafting the rule. One additional report was provided: "Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS)," published by the Federal Highway Administration in 2012. Although this report did not focus on the issue of sign height, it did focus on driver distraction, which was helpful. Scenic Texas provided two reports to rebut the draft rule and propose a 30 foot limit (Veridian Group review of the ISA and USSC reports and a Veridian Group report supporting a 30 foot limit). These reports focused on the dangers of encouraging a 5 second read time at highway speeds. It noted that department directional signs were lower and used larger fonts to avoid this problem.

Response: Given these myriad and conflicting facts, the department believes that there is insufficient justification to modify the current maximum height requirement and therefore withdraws the proposed change to §21.189(a).

Since the amendment to §21.189(a) has been withdrawn, the remainder of §21.189 had to be modified. Proposed

§21.189(e)(1), now §21.189(e), clarifies that the sign height is measured from the centerline of the main-traveled way chosen by the sign owner. The 25 foot minimum ground clearance provided by the proposed §21.189(e)(2) is no longer a practical method of establishing a minimum ground clearance and has been removed. A sentence was added to §21.189(e) to achieve a minimum ground clearance, which provides that in the event that the main-traveled way is below grade, sign height will be measured from the bottom of the base of the sign. This should provide a minimum ground clearance of 18-1/2 feet and, in the case of a below grade level highway, that no sign structure will exceed the 42-1/2 foot height limit.

## SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY HIGHWAYS

### DIVISION 1. SIGNS

#### 43 TAC §§21.146, 21.187, 21.189

##### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads, and Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads.

##### CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 391 and 394.

##### §21.146. *Exempt Signs.*

(a) The following signs are exempt from this division:

(1) an on-premise sign that meets the criteria provided by §21.147 of this division (relating to On-premise Sign) except as provided by subsection (c) of this section;

(2) a sign that has the purpose of protecting life or property;

(3) a sign that provides information about underground utility lines;

(4) an official sign that is erected by a public officer, public agency, or political subdivision under the officer's, agency's, or political subdivision's constitutional or statutory authority;

(5) a sign required by the Railroad Commission of Texas at the principal entrance to or on each oil or gas producing property, well, tank, or measuring facility to identify or to locate the property if the sign is no larger than necessary to comply with the Railroad Commission's regulations;

(6) a sign of a nonprofit service club, charitable association, religious organization, chamber of commerce, nonprofit museum, or governmental entity, other than an entity to which paragraph (8) of this subsection applies, that gives information about the meetings, services, events, or locations of the entity and that does not exceed an area of 32 square feet;

(7) a public service sign that:

(A) is located on a school bus stop seating bench or shelter;

(B) identifies the donor, sponsor, or contributor of the shelter;

(C) contains a public service message that occupies at least 50 percent of the area of the sign;

(D) has no content other than that described by subparagraphs (B) and (C) of this paragraph;

(E) is authorized or approved by the law of the entity that controls the highway involved, including being located at a place approved by the entity;

(F) has a sign face that does not exceed an area of 32 square feet; and

(G) is not facing the same direction as any other sign on that seating bench or shelter;

(8) a sign that is erected and maintained by a public school, a college or university, or a non-profit agricultural fair, but only if the information presented on the sign is limited to information about the meetings, services, events, or on premise activities of the entity, and the total area of the sign's face facing a particular direction of travel does not exceed 200 square feet.

(9) a sign that shows only the name of a ranch on which livestock are raised or a farm on which crops are grown, and the directions to, telephone number, or internet address of the ranch or farm, and that has a sign face that does not exceed an area of 32 square feet;

(10) a sign that:

(A) relates only to a public election;

(B) is located on private property;

(C) is erected after the 91st day before the date of the election and is removed before the 11th day after the election date;

(D) has a sign face that does not exceed an area of 50 square feet; and

(E) contains no commercial endorsement;

(11) a sign identifying the name of a recorded subdivision located at an entrance to the subdivision or on property owned by or assigned to the subdivision, home owners association, or other entity associated with the subdivision; and

(12) a sign that:

(A) is located on the sign owner's real property;

(B) does not result in any monetary benefit for the owner or material benefit to a third-party;

(C) does not relate to a public election;

(D) has no more than a single sign face fronting a particular direction of travel; and

(E) has no single sign face that exceeds 96 square feet.

(b) This division does not apply to a sign that was erected before October 23, 1965 and that the commission, with the approval of the Secretary of the United States Department of Transportation, has determined to be a landmark sign of such historic or artistic significance that preservation would be consistent with the purposes of the Highway Beautification Act of 1965, 23 United States Code §131.

(c) An on-premise sign that meets the criteria provided by §21.147 of this division (relating to On-premise Sign) cannot be erected earlier than one year before the date that the business for which the sign is erected will open and conduct business.

§21.187. *Spacing of Signs.*

(a) Permitted signs on the same side of a regulated freeway, including freeway frontage roads, may not be erected closer than 1,500 feet apart.

(b) For a highway on a non-freeway primary system and outside the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 750 feet apart.

(c) For a highway on a non-freeway primary system highway and within the incorporated boundaries of a municipality, permitted signs on the same side of the highway may not be erected closer than 300 feet apart.

(d) A permitted sign that is located within the incorporated boundaries of a certified city on a highway on a freeway primary system may not be closer than:

(1) 1,500 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality; or

(2) 500 feet to another sign that is on the same side of the highway and inside the incorporated boundaries of a municipality.

(e) A permitted sign that is located within the incorporated boundaries of a municipality on a highway that is on a non-freeway primary system may not be closer than:

(1) 750 feet to another sign that is on the same side of the highway and outside the incorporated boundaries of a municipality; or

(2) 300 feet to another sign that is on the same side of the highway and inside the incorporated boundaries of a municipality.

(f) For the purposes of this section, the space between signs is measured between points along the right of way of the highway perpendicular to the center of the signs.

(g) For the purposes of this section, a municipality's extraterritorial jurisdiction is not considered to be included within the boundaries of the municipality.

(h) This section does not apply to directional signs, on-premise signs, or official signs that are exempted from the application of Transportation Code, §391.031.

(i) The spacing requirements of this section do not apply to signs separated by buildings, natural surroundings, or other obstructions in a manner that causes only one of the signs to be visible within the specified spacing area.

(j) A permitted sign may not be erected within five feet of the highway right of way line. The distance shall be measured from the end of the sign face nearest the right of way line.

(k) A permitted sign that is being displaced by a highway construction project will not be considered in determining the spacing for a new sign application.

§21.189. *Sign Height Restrictions.*

(a) Except as provided by subsection (f) of this section, a sign may not be erected that exceeds an overall height of 42-1/2 feet.

(b) A roof sign that has a solid sign face surface may not at any point exceed 24 feet above the roof level.

(c) A roof sign that has an open sign face in which the uniform open area between individual letter or shapes is not less than 40 percent of the total gross area of the sign face may not at any point exceed 40 feet above the roof level.

(d) The lowest point of a projecting roof sign or a wall sign must be at least 14 feet above grade.

(e) For the purposes of this section, height is measured from the centerline of the main-traveled way closest to the sign face, at a point perpendicular to the sign location. A frontage road of a controlled access highway or freeway is not considered the main-traveled way for purposes of this subsection. In the event that the main-traveled way that is perpendicular to the sign structure is below grade, sign height will be measured from the base of the sign structure.

(f) The height measurement does not include any renewable energy device such as solar panels or wind turbines that are attached to the sign structure above the sign face to improve the energy efficiency of the sign structure.

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 September 22, 2014.

TRD-201404512

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 12, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 463-8683



**SUBCHAPTER K. CONTROL OF SIGNS  
ALONG RURAL ROADS**

**43 TAC §21.405**

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which provides authority to establish rules to regulate the orderly and effective display of outdoor advertising on primary roads, and Transportation Code, §394.004, which provides the commission with the authority to establish rules to regulate the erection and maintenance of signs on rural roads.

**CROSS REFERENCE TO STATUTE**

Transportation Code, Chapters 391 and 394.

§21.405. *Exemptions.*

(a) The following are exempt from the requirements of this subchapter:

(1) a sign, the erection and maintenance of which is allowed under the highway beautification provisions of the Transportation Code, Chapter 391;

(2) a sign in existence before September 1, 1985, that was properly registered and maintains a valid registration under §21.407 of this subchapter (relating to Existing Off-Premise Signs);

(3) a sign that has as its purpose the protection of life and property;

(4) a directional or other official sign authorized by law, including a sign pertaining to a natural wonder or scenic or historic attraction;

(5) a sign or marker giving information about the location of an underground electric transmission line, telegraph or telephone property or facility, pipeline, public sewer, or waterline;

(6) a sign erected by a governmental entity;

(7) a sign erected solely for and relating to a public election, but only if:

(A) the sign is on private property;

(B) the sign is erected after the 91st day before the election and is removed before the 11th day after the election;

(C) the sign is constructed of lightweight material;

(D) the surface area of the sign is not larger than 50 square feet; and

(E) the sign is not visible from the main-traveled way of an interstate or federal-aid primary highway;

(8) an off-premise directional sign for a small business, as defined by Government Code, §2006.001, that is on private property and is no larger than 50 square feet;

(9) a sign that is required by the Railroad Commission of Texas at the principal entrance to or on each oil or gas producing property, well, tank, or measuring facility to identify or to locate the property, that is no larger in size than is necessary to comply with the Railroad Commission's regulations, and that has no advertising or information content other than the name or logo of the company and the necessary directions;

(10) a sign that shows only the name of a ranch on which livestock are raised or a farm on which crops are grown and the directions to, telephone number, or internet address of the ranch or farm and that has a sign face that does not exceed an area of 32 square feet;

(11) a sign identifying the name of a recorded subdivision located at an entrance to the subdivision or on property owned by or assigned to the subdivision, home owners association, or other entity associated with the subdivision;

(12) a sign of a nonprofit service club, charitable association, religious organization, chamber of commerce, or nonprofit museum that gives information about the meetings, services, events, or locations of the entity and that does not exceed an area of 32 square feet;

(13) a public service sign that:

(A) is located on a school bus stop seating bench or shelter;

(B) identifies the donor, sponsor, or contributor of the shelter;

(C) contains a public service message that occupies at least 50 percent of the area of the sign;

(D) has no content other than that described by subparagraphs (B) and (C) of this paragraph;

(E) is authorized or approved by the law of the entity that controls the highway involved, including being located at a place approved by the entity;

(F) has a sign face that does not exceed an area of 32 square feet; and

(G) is not facing the same direction as any other sign on that seating bench or shelter;

(14) a sign that is erected and maintained by a public school, or a college or university, or a non-profit agricultural fair, but only if the information presented on the sign is limited to information about the meetings, services, events, or on premise activities of the entity, and the total area of the sign's face facing a particular direction of travel does not exceed 200 square feet; and

(15) a sign that:

(A) is located on the sign owner's real property;

(B) does not result in any monetary benefit for the owner or material benefit to a third-party;

(C) does not relate to a public election;

(D) has no more than a single sign face fronting a particular direction of travel; and

(E) has no single sign face that exceeds 96 square feet.

(b) An on-premise sign that meets the criteria provided by §21.442 of this subchapter (relating to On-premise Sign) cannot be erected earlier than one year before the date that the business for which the sign is erected will open and conduct business.

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 September 22, 2014.

TRD-201404513

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 12, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 463-8683



## CHAPTER 25. TRAFFIC OPERATIONS

### SUBCHAPTER A. GENERAL

#### 43 TAC §25.1

The Texas Department of Transportation (department) adopts an amendment to §25.1, concerning Uniform Traffic Control Devices. The amendment to §25.1 is adopted without changes to the proposed text as published in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4640) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENT

Under Transportation Code, §544.001, the Texas Transportation Commission (commission) is required to adopt a manual for a uniform system of traffic control devices. The statute further states that the manual must be consistent with state traffic laws and to the extent possible conform to the system approved by the American Association of State Highway Transportation Officials. The edition of the manual that is currently effective is the 2011 version, Revision 1.

The Texas Manual on Uniform Traffic Control Devices (MUTCD) is revised periodically to accommodate changing transportation needs and traffic control tools and to clarify and maintain consis-



tency with the National MUTCD to allow use of a single manual for local, state, and federal-aid highway projects. The National MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways open to public travel. The National MUTCD is published by the Federal Highway Administration (FHWA) under Title 23, Code of Federal Regulations, Part 655, Subpart F.

TxDOT is revising the 2011 Texas MUTCD, Revision 1 to eliminate definitions not recognized by FHWA ("toll lane" and "toll ramp") and to correct figures and tables to conform to National MUTCD; to adopt a clearer sign text message for bridge icing conditions; to eliminate cemetery signing, which is not accepted under national practice; and to correct minor, non-substantive typographical errors in the 2011 Texas MUTCD, Revision 1. The new document is referred to as 2011 Texas MUTCD, Revision 2. The changes apply only to signs that are installed, including replaced, after the changes take effect. An existing sign is not required to conform to the changes until the sign is replaced because of damage or under the sign's replacement schedule.

The amendment to §25.1, Uniform Traffic Control Devices, changes the reference to the Texas MUTCD from 2011 Texas MUTCD, Revision 1 to 2011 Texas MUTCD, Revision 2.

Both the Texas MUTCD, Revision 1 and Revision 2 are available online at the department's website, [www.txdot.gov](http://www.txdot.gov). The National MUTCD is available online at [www.fhwa.dot.gov](http://www.fhwa.dot.gov).

#### COMMENTS

Comments regarding the Texas MUTCD update were received from Mr. Michael Morris, P.E., of the North Central Texas Council of Governments on behalf of the Regional Transportation Council (RTC).

Comment: RTC requests that the R3-50aT sign allow for a banner at the bottom to replace the "PAY BY MAIL" toll rate with the "HIGHER RATES FOR NO TAG OR LARGER VEHICLES". RTC states that in the Dallas Fort Worth region two versions of this banner have been deployed: 1) on LBJ Express and NTE Express "HIGHER RATES FOR NO TAG OR LARGER VEHICLES"; and 2) on DFW Connector and planned for IH 30 "NO TAG", both of which are different from the sign in the TMUTCD of "PAY BY MAIL".

Response: The department declines to include the requested banner in the TMUTCD revision. The changes to the current TMUTCD are to conform with the federal MUTCD and the federal manual does not include this variation of the sign.

Comment: RTC requests that the R3-50aT sign replace the Tx-Tag logo with a symbol of a car to represent single-occupant vehicles (SOV). Everyone traveling on the lanes within the Dallas-Fort Worth region may not recognize and/or does not have a TxTag.

Response: The department declines to accept this recommendation and is not amending the TMUTCD as requested. A symbol of the profile of a car is not defined in the National or Texas MUTCD to indicate a SOV and is currently used for pricing on standard toll sign W90-11T for a passenger car regardless of the number of occupants. Using the same car symbol to indicate a SOV could cause confusion to the road-user. Additionally, the following statement is contained in Section 2A.12 of the 2011 Texas MUTCD: "New symbol designs are adopted by the Federal Highway Administration based on research evaluations to determine road-user comprehension, sign conspicuity, and sign legibility." Without a study of the use of the car symbol to indi-

cate a SOV, the department will not be making this change to the TMUTCD.

Comment: RTC requests that the R3-50aT sign adjust the order of the toll categories to have a symbol of a car on top to represent SOV's followed by "HOV 2+". RTC states that within their region two versions of the order of the toll categories are being used: 1) on LBJ Express and NTE Express the car symbol is on top followed by the "HOV 2+"; and 2) on DFW Connector and planned for IH 30 the "HOV 2+" is on top followed by a car symbol.

Response: The department declines to accept this recommendation. Regulatory signs for managed lanes displaying more than one toll rate are listed in order from the lowest rate to the highest rate. This concept is used on a sign identifying more than one class of vehicles (eg., R3-50aT sign) as well as a sign identifying more than one downstream exit from a facility (e.g., R3-48T sign). The hierarchy of lowest to highest price or closest to furthest exit for distance signs is used for uniformity and road-user comprehension.

Comment: RTC requests that the following statements be adjusted in the "EXPLANATION OF PROPOSED AMENDMENT" on page 2, lines 10 through 14 of the proposed preamble, which states: "The changes will apply only to signs that are installed, including replaced, after the changes take effect. An existing sign is not required to conform to the changes until the sign is replaced because of damage or under the sign's replacement schedule." These statements would allow signs within the Dallas-Fort Worth region to remain inconsistent for multiple years. In addition, if one sign along a corridor is damaged and others are not, the proposed changes would lead to inconsistent signing within the corridor itself and not just between corridors, causing more confusion for the motoring public. There may be unintended compensable outcomes from changes to current usage and conditions.

Response: The comment refers to statement in the Proposed Preamble of the Proposed Adoption of Amendments. The statement is paraphrased from existing language contained in the Texas MUTCD (Paragraph 18 of the introduction) as follows: "Unless a particular device is no longer serviceable, non-compliant devices on existing highways and bikeways shall be brought into compliance with the current edition of the TMUTCD as part of the systematic upgrading of substandard traffic control devices." The purpose of the statement is to allow a transition period for upgrading existing traffic control devices not in conformance with the new Texas MUTCD standards. Road authorities have the discretion to expedite the upgrade of devices as resources allow. The department therefore declines to adopt any language change requested by this comment.

#### STATUTORY AUTHORITY

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §544.001, which requires the commission to adopt a manual of uniform traffic control devices.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 544.

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 September 22, 2014.

TRD-201404514

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 12, 2014

Proposal publication date: June 13, 2014

For further information, please call: (512) 463-8683



## CHAPTER 27. TOLL PROJECTS

### SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

#### 43 TAC §27.80, §27.82

The Texas Department of Transportation (department) adopts amendments to §27.80 and §27.82, concerning Operation of Department Toll Projects. The amendments to §27.80 and §27.82 are adopted without changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5350) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

The department is constructing managed lane projects where dynamic pricing will be used to set the amount of the toll charges for the use of the tolled managed lanes. During the dynamic pricing phase, tolls are continually adjusted according to traffic conditions to maintain a free-flowing level of traffic, generally based on a prescribed algorithm.

The amendments to §27.80 and §27.82 define the term executive director and authorize the executive director to establish toll rates for the use of a toll project where dynamic pricing is in effect. In setting the toll rates, the executive director will consider vehicle classifications, type and location of the facility, regional policies, and similar criteria that apply to a specific project. The toll rates may be established through the approval of an algorithm or other methodology designed to maintain a free-flowing level of traffic on one or more lanes of the toll project.

#### COMMENTS

Comments were not received for the proposed amendments.

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.007, which provides that the commission may by order authorize the department to charge a toll for the use of one or more lanes of a state highway, and Transportation Code, §228.053, which authorizes the department to impose tolls for the use of each toll project or system and the different segments or parts of each project or system.

#### CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 228.

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 September 22, 2014.

TRD-201404515

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 12, 2014

Proposal publication date: July 11, 2014

For further information, please call: (512) 463-8683



## PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

### CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

#### SUBCHAPTER C. LICENSES, GENERALLY

#### 43 TAC §215.88, §215.89

The Texas Department of Motor Vehicles (department) adopts new §215.88, Criminal Offense and Action on License; and new §215.89, Fitness, without changes to the proposed text as published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4211). The new sections will not be republished.

#### EXPLANATION OF ADOPTED NEW SECTIONS

The adopted new sections implement Occupations Code, Chapter 53 and §2301.651. The statutory provisions authorize and, at times, require board or department action on an application for a license or an existing license issued by the department when a person has committed a criminal offense or is unfit to hold a license. The adopted new sections identify criminal offenses that directly relate to the duties and responsibilities of such license holders and provide standards for determination of fitness for licensure.

The adopted new sections address a license issued under Transportation Code, Chapter 503 or under Occupations Code, Chapter 2301, which include manufacturers, distributors, representatives, converters, dealers, auctions, independent mobility motor vehicle dealers, vehicle lease facilitators, and vehicle lessors. The department is issuing guidelines in accordance with Occupations Code, §53.025, stating the reasons a particular criminal offense is considered to relate to a particular license. The guidelines are being published in the *In Addition* section of the *Texas Register*.

These adopted new sections preserve the applicant's or licensee's right to an opportunity for a hearing on the merits before action is taken to deny an application or to revoke or suspend a license.

The distribution and sale of motor vehicles in Texas vitally affects the general economy of the state and the public interest and welfare of its citizens. The department is charged with preventing fraud, unfair practices, discrimination, impositions, or other abuses of the people of Texas to ensure a sound system of distributing and selling motor vehicles.

Adopted new §215.88(a) provides the purpose and scope of the new section.

Adopted new §215.88(b) provides that an action by the board or department to deny an application for a license or to revoke or suspend a license will be made in accordance with applicable law and board rules.

Adopted new §215.88(c) clarifies the terms "applicant" and "person" as used in §215.88, and provides a non-exhaustive list of individuals identified by those terms.

Adopted new §215.88(d) implements Occupations Code, §2301.651(b), which authorizes the board to take action against an applicant or license holder for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder that could be cause for denying, suspending, or revoking the license. Because "person" is defined in new §215.88(c), "person" in §215.88(d) specifically includes those individuals identified under §215.88(c), such as an owner, president, vice-president, member of the board of directors, chief executive officer, chief financial officer, chief information officer, chief managing officer, treasurer, controller, director, principal, manager of business affairs, spouse with a community property interest in the licensed entity, a controlling shareholder of the licensed business entity, or a person holding 50% or more ownership interest in the licensed business entity.

Adopted new §215.88(e) implements the mandatory suspension requirements of Family Code, Chapter 232. Family Code, §232.011, requires the board to suspend a license upon receipt of an order or notification issued under Family Code, Chapter 232. The board or department's suspension of the license does not afford the licensee an opportunity for a hearing under Government Code, Chapter 2001. Upon receipt of an order under Family Code, Chapter 232, vacating or staying an order suspending a license, the board must issue or reinstate the license if the applicant or license holder is otherwise qualified for the license.

Adopted new §215.88(f) prohibits a person who is currently imprisoned for felony conviction under any state or federal law from being licensed by the department.

Adopted new §215.88(g) implements Occupations Code, §53.021(b), which requires the board or department to revoke a license issued by the department upon the licensee's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. The statutory provision is mandatory and the board and department have no discretion when the licensee is imprisoned under these circumstances.

Adopted new §215.88(h) implements Occupations Code, §53.021 and §2301.651, by giving the board or department discretion to revoke a license issued by the department when certain persons other than the licensee are imprisoned for felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Adopted new §215.88(i) implements Occupations Code, §53.021(a), and permits the board or department to suspend a license, revoke a license, or disqualify a person from receiving a license under four scenarios. First, the board or department has discretion to act on an application for a license or a license if a person is convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Second, the board or department has discretion to act on an application for a license or a license if a person is convicted of an offense that does not directly relate to the duties of the licensed occupation

but that was committed less than five years before the date the person applies for the license. Third, the board or department has discretion to act on an application for a license or a license if a person is convicted of certain criminal offenses, including murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, sexual assault, sexual performance by a child, compelling prostitution, trafficking of persons; the manufacture or delivery of a controlled substance or delivery of marijuana in certain locations, such as near a youth center, playground, public swimming pool, or video arcade facility; and injury to a child, elderly individual, or disabled individual, under certain conditions. Fourth, the board or department has discretion to act on an application for a license or a license if a person is convicted of a "sexually violent offense" as that term is defined in the Code of Criminal Procedure, Article 62.001 (any of the following committed by a person 17 years of age or older: continuous sexual abuse of a young child or children, indecency with a child, sexual assault, aggravated sexual assault, or sexual performance by a child). The definition also addresses conviction of aggravated kidnapping and burglary, under certain conditions.

Adopted new §215.88(j) lists offenses that directly relate to the duties and responsibilities of the occupations licensed by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301. The list of criminal offenses reflects the diverse nature of the occupations involved in the vehicle and motor vehicle businesses and industry. The list of crimes includes offenses against the person, property, and public administration; offenses involving motor vehicles, certificates of title and registration, tax, hazardous substances, the environment, organized crime, competition and trade practices; and certain federal offenses involving commerce and trade, motor vehicle safety standards, equipment tampering, and odometer tampering.

Adopted new §215.89 implements Occupations Code, §§53.021, 53.022, 53.023, and 2301.651. Adopted new §215.89(a) affirms that in determining a person's fitness for a license, the board or department will consider applicable law, including specific statutory licensing criteria or requirements, mitigating factors, extenuating circumstances, and other evidence of a person's fitness.

Adopted new §215.89(b) provides that the board or department has discretion to determine a person's fitness for licensure and lists the actions and omissions the board or department considers indicative of a person's fitness to hold a license. These actions or omissions include failure to meet or maintain the qualifications required for licensure; conviction of a criminal offense listed in §215.88(j); omission of or incomplete information provided by an applicant or licensee on an application regarding a conviction; a history of violation of regulatory requirements, including violations in other jurisdictions; or the failure of an applicant or licensee to meet its financial obligations, maintain the authority necessary to conduct business in Texas, pay a civil penalty or administrative fee, or to otherwise comply with the terms of a final order. In order to limit an unfit person's ability to conceal himself or herself as another person or as another entity or to transform into a different entity for the purpose of obtaining a license, the board or department may consider certain relationships of the applicant or licensee in making a fitness determination, including business associations and familial relationships. Finally, the board or department may determine that an applicant or licensee is unfit to hold a license if the person is found, in an order issued through an administrative proceeding,

to be unfit or to be acting in a manner detrimental to a sound system of distribution or sale of motor vehicles in Texas.

#### COMMENTS

No comments on the proposed new sections were received.

#### STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §503.002 and §1002.001, and under Occupations Code, §2301.153 and §2301.155, which provide the Board of the Texas Department of Motor Vehicles the authority to establish rules for the conduct of the work of the department; under Transportation Code, §503.038, which authorizes the department to cancel a dealer's general distinguishing number license if the dealer violates a rule adopted under Transportation Code, Chapter 503; under Occupations Code, §53.025, which requires the department to issue guidelines stating the reasons a particular crime relates to a particular license; under Occupations Code, §§2301.151-2301.153 and 2301.155, which provide the board's jurisdiction, require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by board rules, and empower and authorize the board to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; under §2301.351, which prohibits a dealer from violating a board rule; and under Occupations Code, §2301.651, which provides for the board's denial of an application for license or revocation or suspension of a license if the applicant or license holder is unfit under standards described in board rules.

#### CROSS REFERENCE TO STATUTE

Occupations Code, §§53.021, 53.022 - 53.025, and 2301.651.

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 September 16, 2014.

TRD-201404420

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: October 6, 2014

Proposal publication date: May 30, 2014

For further information, please call: (512) 465-5665



## CHAPTER 217. VEHICLE TITLES AND REGISTRATION

### SUBCHAPTER H. DEPUTIES

#### 43 TAC §217.111

The Texas Department of Motor Vehicles (department) adopts new Subchapter H, Deputies, §217.111, Deputies, which was proposed as §217.111, Purpose and Scope, with changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3974). Adopted new §217.111 will be republished. The department simultaneously withdraws proposed new §§217.112 - 217.116 as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3974).

#### EXPLANATION OF ADOPTED NEW SUBCHAPTER

The new subchapter implements Transportation Code, §520.0071, as added by House Bill 2741 and House Bill 2202, 83rd Legislature, Regular Session, 2013. Section 520.0071 requires the board by rule to prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

These bills also repealed Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, which had governed deputies providing titling and registration services.

Both of these bills also provided that a deputy appointed under Transportation Code, §520.0091 on or before August 31, 2013, may continue to perform the services authorized under Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, until the effective date of the rules regarding the types of deputies authorized to perform titling and registration duties under Transportation Code, §520.0071.

The proposed new sections of Subchapter H were intended to fill the void created by the repeal of the former Transportation Code sections describing deputies and their duties and obligations, and to implement the legislative directive to prescribe rules governing deputies performing titling and registration duties. The fees proposed under this rulemaking were intended to be temporary, until the completion of a study of the cost to process motor vehicle registration and titling transactions. After the study was completed and the findings presented to the board of the department, the board would then decide whether to reopen the rules for amendment.

The publication of the proposed new rules resulted in a great number of comments from the public, including comments from stakeholders such as county tax assessor-collectors, title companies, automobile dealers, industry groups, and other concerned private and public citizens and organizations. These comments are summarized in more detail in the "comments" section below.

Many of the comments expressed the concern that the proposed additional fees that deputies could charge for providing titling and registration services were too low, so that many deputies would be put out of business or refuse to continue to provide titling and registration services as deputies. Many of the comments expressed the concern that the loss of deputies would impose increased financial and workflow burdens on the county tax assessor-collectors, and would greatly inconvenience those customers who prefer the convenience, additional services, and improved efficiency that a deputy may offer.

Several commenters urged the department to wait until the completion of the comprehensive titling and registration fee study, which is expected to be completed in November 2014, before enacting rules related to deputy fees. Several commenters also urged that the department convene a working group of stakeholders, including industry groups, representative county tax assessor-collectors, and other interested parties, to discuss deputy issues, including fees, before the adoption of the deputy rules.

In response to these comments, the department is withdrawing the proposed deputy rules (except for §217.111, which is being modified, as explained below). The department will repropose new deputy rules following the completion of the fee study and following additional discussions with stakeholders and other interested parties.

New §217.111, Deputies, is required to maintain the current status quo for deputies until such time as the department is able to adopt comprehensive deputy rules following the completion of the fee study and discussions with stakeholders and interested parties. This new section makes clear that county tax assessor-collectors may continue to appoint new deputies prior to the adoption of comprehensive deputy rules. This new section also makes clear that existing and newly appointed deputies will continue to provide the services authorized under the former statutory provisions of Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092.

#### COMMENTS

The department received comments from 160 groups, businesses, and citizens, expressing their concerns regarding the proposed rules.

The following 85 commenters asked that the independent titling companies be allowed to remain in business as they provide a valued and needed service: Anna Behiti, Austinite Auto Sales; Judith A. Beers; Michael C. Miller; Candace A. York; Shelby Sumerlin; Adrian Castellanos; Danny Owens, Clearwater Transportation, LTD d/b/a Dollar Thrifty Car Rental; Kelly Laake, Magnum Custom Trailers; Jan Hardcastle, C.C. Carlton Industries, Ltd.; John Pickens; Karen Ratliff; William Young; Michael McCormack; Brad and Kathy Hill; Ace L. Burt; Timothy Catlin Whittington; Val Emrick; Jessica Smith; David Doretto; Carole A. Griffin; Megan Donahue, Covert Ford; Danny Dawdy; Doyle Antle; Boughan Auto Sales; Martha Grona; Billie Davison; Apple Leasing; Ceasar A. Hernandez, Auto Motors Austin LLC; Shanna Lea; Craig Cherico; Robert R. Krull, Lone Star BMW/Triumph; Raymond Klingermann, Klingermann Car Care Center; Charles Mautz; Homer and Mickey Owens; Bonnie P. Keller, Kyle Chapman Motor Sales; Gloria Wuthrich; William H. Pitts; Michael K. Lucero; Jack Petrucelli, QSI Truck Sales; Wm. Turansky; Denio Adams; Jessica Kapusinski; Wendy Brooks; Roger Hankins, RGB Auto Sales; Kristoffer Aaron Morgan; Sid Mourning Tree Service, Inc.; Mike Sullivan; Jim Olmstead, Sybil Childers, and Andrea Baker, First Texas Honda; George Frock; Craig McKinley; Marla Wilkerson, Frances Martin, Rebecca Evans, and Sharla Marek, Covert Cadillac Buick GMC; Charlene Glimp and Heidi Frederick, Covert Buick, Inc.; BJ Gray; James P. Willie; Anne Markley; Sean Mahan; Katie Farmer, Cars of Austin.com, LLC; Sid Mourning and Tracy Allison; Randy Norris; Rosie Johnson, R & D Motors; Joe Essler; Earl Campbell; Heather Diaz, South Point Hyundai; Avery Strait; Johnny C.; Howard Gatewood; Rosa Olivares; Robert and Cynthia Labuda; Mona Rodriguez, Texas Auto Center, LLC; Cynthia Garrett, Drive Trainers Campus, Inc.; Amy Menchaca, Charles Maund Imports; Billy Cockrell; Mary Ann Hotmann, Charles Maund Toyota; Tori Mykal Bove; Anne and John Ramsey; Carlos Reyna; Charles Floyd; Cord Shiflet; and Katrina Scheihing.

The following 17 commenters stated that the fees currently charged by deputies are reasonable and requested that the deputies be allowed to continue to stay in business: David S. Jellison; Michelle Buffington, Elite Motorsports; Irene Porras, Covert Chrysler Dodge Jeep Ram; Karin Phillips, Texas Trucks & Toys; Pat Urbach; Highway Gmail; Todd Danz; Michael Wehbe, N.F.W. Auto Sales; Danette and Dick Bottos; Angela Ortiz, Covert Buick, Inc.; Lee Hagy; Jon Minor; Glenn L. Randle; Ben Joyce; Mona Chmeis, Hi-Tech Automotive; Joseph Thorne Gilbert; and Kathleen Davis.

The department received nine comments stating that customers should have the right to choose between taking their titling or

registration transactions to the county tax assessor-collectors or to deputies, including comments from: David Huggins; Jerry Grona; J. Urbach, Sr.; Skull; Regena Baker, Stepping Stone Schools; Linda Lamkin, Henna Chevrolet LP; Felisha Flores; Debbie Stuart, Terry Sayther Automotive; and David Lamping, Flamingo Motor Cars.

The following six commenters stated that the fees currently being charged were reasonable; that the proposed fees are too low; and/or that a reasonable fee should be allowed: Leon Whitney; Jinee Rizzo, Ph.D; Miles Frost; Angela Vasconcellos; Jimmy D. Lillard; and Olga Campos. The following five commenters stated that the public should have the right to choose whether they wanted to pay the additional fee for the services provided by deputies: Jeremy Raquet; Joe Jackson; Darla Jackson; Jeanne L. Samson, Levelfield Auto; and Maria Vara.

There were six comments in support of the titling service companies from: Allison Patterson, South Point Hyundai; Sharla Resseguie, Capitol Car Credit; Emily Hutchinson; Ducati Austin; William Haskell, Khitomer Solutions; and Starkar Auto Sales.

John Brodnax stated that the fees charged are reasonable and the public should be given the right to choose. John Taylor; and Anton Ratsa, East West Auto Sales, recommended that titling businesses not be regulated by the government and that they be allowed to remain open. Allan Brandes and Mike Bell recommended that titling businesses not be regulated by the government and stated that the current fees were reasonable.

Kathy Wagner stated that the fees being charged were fair and requested that a working group be established to come to a fair solution.

The county tax assessor-collectors from Denton, Dallas, Brazos, Lubbock, Williamson, Travis, Tarrant, Collin, Bexar, Harris and El Paso counties, along with the Tax Assessor-Collectors Association of Texas (TACA), filed comments detailing suggested changes to the proposed rules and suggesting a working group be established to discuss the rules before adoption. The Texas Association of Counties (TAC) supported the comments of TACA.

The following title companies submitted comments: Tri Star Auto Title; Texas Auto Registration and Titles; Monica Ramirez, El Paso Auto Registration & Titling; Nubia Acosta, EZ Title Registration Inc.; Donna Childress, Sharon Gattis, and Rita Newton, Universal Auto Title Services; and Chris Moravec and Patience Urbach, Fry Auto Title Services. These comments generally requested that deputies be allowed to determine the additional fees that they charge their customers, that customers be given the right to choose, and that they be included in a formal, professional study to determine the allowable additional fees and other rules concerning deputies.

The department received comments from the Texas Automobile Dealers Association (TADA), suggesting separate deputy or licensing rules for the dealer community, bond requirements, and participation in the department's electronic title processing system. The Texas Independent Automobile Dealers Association (TIADA) requested an adjustment of the proposed fee limits and supported the recommendations of TADA, TAC, and TACA.

Additional comments were received from the Travis County Commissioners Court, requesting that the department work with the tax offices at the county level; and from Bill Aleshire of Riggs, Aleshire & Ray, P.C., on behalf of Travis Auto Title

Companies, requesting to participate in a formal, professional study regarding the rules.

#### RESPONSE

The proposed rules prescribed the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies. The board agrees with those commenters who suggested that these rules not be adopted until the pending fee study is completed and stakeholders and other interested parties are further consulted.

At this time, the board withdraws proposed new §217.112, Definitions; §217.113, Full Service Deputies; §217.114, Limited Service Deputies; §217.115, Bonding Requirements; and §217.116, Deputy Fees, with neither concurrence nor disagreement with comments received. The board will repropose these sections after the completion of the pending fee study and further consultation with stakeholders and other interested parties.

New §217.111, Deputies, maintains the current status quo for deputies until such time as the department is able to adopt comprehensive deputy rules following the completion of the fee study and discussions with stakeholders and interested parties. This new section makes clear that county tax assessor-collectors may continue to appoint new deputies while the new deputy rules are being considered. This new section also makes clear that existing and new deputies will continue to provide the services authorized under the former statutory provisions of Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092.

#### STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; Transportation Code, §520.003, which provides the department may adopt rules to administer Chapter 520, Miscellaneous Pro-

visions; and more specifically, Transportation Code, §520.004, which provides the department by rule shall establish standards for uniformity and service quality for counties and dealers; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

#### CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§501.076, 502.191, 502.1911, 502.197, and 520.007.

§217.111. *Deputies.*

(a) A county assessor-collector with the approval of the commissioners court of the county may deputize a person to perform the services authorized under former Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357), effective January 1, 2012.

(b) A deputy appointed under Transportation Code, §520.0091 may perform the services authorized under former Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357), effective January 1, 2012.

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 September 16, 2014.

TRD-201404423

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: October 6, 2014

Proposal publication date: May 23, 2014

For further information, please call: (512) 465-5665



# TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,  
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30<sup>th</sup> day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10<sup>th</sup> day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

## Texas Department of Insurance

### Proposed Action on Rules

#### TEXAS DEPARTMENT OF INSURANCE EXEMPT FILING NOTIFICATION UNDER TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 AND NOTICE OF HEARING

The staff of the Texas Department of Insurance filed Petition No. W-0914-07-I on September 16, 2014. The petition requests that the commissioner adopt the *National Council on Compensation Insurance Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance (NCCI ER Plan)* and the Texas exceptions for experience rating modifications with effective dates on or after July 1, 2015.

The petition also requests that the current *Texas Experience Rating Plan (Texas ER Plan)* remain in effect for calculating and revising experience rating modifications with effective dates prior to July 1, 2015, and that any future revisions to the *NCCI ER Plan* with Texas exceptions follow either the procedure under Insurance Code Article 5.96 or the procedure in Commissioner's Order No. 3142.

Adopting the *NCCI ER Plan* with Texas exceptions is the last major step in Texas' transition to NCCI state status for workers' compensation purposes. The *NCCI ER Plan* with Texas exceptions will replace the *Texas ER Plan*, which is the last part of the *Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Texas Basic Manual)* in effect.

An experience rating plan helps ensure that rates reflect individual risk characteristics accurately and helps tailor a risk's premium prospectively, which provides employers a financial incentive for maintaining a safe workplace. It determines whether an insured's claims experience is better or worse than the average risk within that classification by comparing the actual loss experience of individual insureds with the average insured within the same classification.

The proposed *NCCI ER Plan* seeks to make experience rating more responsive to individual risk experience by broadening the distribution of experience rating modifications. Most risks will experience changes in their experience rating modifications that are very similar to the changes they experience in a typical annual update. The small number of risks that may move from a credit modification to a debit modification may be able to negotiate their modifications downward, as the negotiated modification rule will still be allowed until July 1, 2018.

Substantive differences between the *Texas ER Plan* and the proposed *NCCI ER Plan* include an experience rating adjustment in NCCI's experience rating modification formula that produces experience rating modifications that appropriately reflect differences between risks; changes to the split point, with corresponding updated weights, ballasts, and claim limitations; annual updates to those and to the expected loss rates and discount ratios; a maximum debit modification; and a three-year transition period to eliminate negotiated experience rating modifications. The *NCCI ER Plan* also incorporates several provisions that are either entirely new to Texas or that differ from provisions that exist in the *Texas ER Plan*, but those changes should not affect premiums.

Many of the changes discussed above in the *NCCI ER Plan* work together to minimize the overall disruption to the industry. For example, the use of the experience rating adjustment decreases the amount of the losses included in the calculation of the experience modification, while the higher split point generally increases the amount of the losses included in the calculation of the experience rating modification. To reduce the impact to individual insureds, NCCI and staff recommend implementing the proposed changes in their entirety, as opposed to transitioning the implementation over time.

NCCI is a licensed advisory organization in Texas, the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation, and the statistical agent and administrator for certain workers' compensation functions in Texas. This rule would adopt the *NCCI ER Plan* and the Texas exceptions, which amend the *NCCI ER Plan* to comply with unique Texas statutory and rule requirements. The *NCCI ER Plan* is currently approved in 38 jurisdictions.

Carriers and policyholders will also benefit from NCCI's technical expertise, infrastructure, and support. All NCCI manuals are currently available electronically on the NCCI website to subscribers and affiliates of NCCI. The Texas exceptions to the *NCCI Stat Plan* will also be available through the same system. NCCI has the staffing and technical resources to create, maintain, and support links between the information in the NCCI manuals and the Texas exceptions, which makes NCCI's electronic manuals very easy to use. NCCI will format the final Texas exceptions to match the style of its other manuals.

Insurance Code Article 5.96 and §§2053.052, 1805.054, 1805.055, and 36.001 authorize staff to file this petition and the commissioner to take the requested action.

You may review a copy of the petition on the TDI website at [www.tdi.texas.gov/rules/2014/exrules.html](http://www.tdi.texas.gov/rules/2014/exrules.html), or you may review a

copy of the petition and exhibits in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The exhibits, available for review only, include the *NCCI ER Plan*; and the draft of the July 1, 2015, Table of Expected Loss Rates and Discount Ratios, Table of Weighting Values, Table of Ballast Values, and various claim limitations that NCCI will file with TDI in September 2014. For further information, please contact the Office of the Chief Clerk by email at [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or by phone at (512) 463-6327.

The commissioner has scheduled a hearing under Docket No. 2771 at 1 p.m. on October 23, 2014, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas, to take action on the staff's petition. To comment on the petition and exhibits, please submit two copies of your comments to TDI by November 3, 2014. Send one copy to the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas

78714-9104. Send the other copy to Nancy Moore, Team Lead, Workers' Compensation Classification and Premium Calculation, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-2A, Austin, Texas 78714-9104. You may also present comments at the hearing.

TDI publishes this notification under Article 5.96 of the Texas Insurance Code, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-201404480  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: September 19, 2014





# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Office of the Governor

### Title 1, Part 1

In accordance with §2001.039, Texas Government Code, the Office of the Governor, Texas Military Preparedness Commission, submits notice of the agency's intention to review the rules found in Chapter 4 (Texas Military Preparedness Commission). Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist.

Comments on this rule review may be hand-delivered to Office of the Governor, Economic Development and Tourism Division, 221 East 11th Street, Austin, Texas 78701; mailed to P.O. Box 12428, Austin, Texas 78711-2428; faxed to (512) 936-0303; or emailed to [pcoleman@gov.texas.gov](mailto:pcoleman@gov.texas.gov), and should be addressed to the attention of Pam Coleman, Program Coordinator. Comments must be received no later than 30 days from the date of publication of this rule review in the *Texas Register*.

TRD-201404479  
David Zimmerman  
Assistant General Counsel  
Office of the Governor  
Filed: September 19, 2014



## Adopted Rule Reviews

Texas Animal Health Commission

### Title 4, Part 2

The Texas Animal Health Commission (commission) adopts the review of 4 TAC Chapter 60, concerning Scrapie, in accordance with Texas Government Code, §2001.039. The commission proposed the review of all sections within 4 TAC Chapter 60, in the June 13, 2014, issue of the *Texas Register* (39 TexReg 4687).

The commission finds that the reasons for adopting 4 TAC Chapter 60 continue to exist. The commission received no comments related to the proposed rule review and no changes are necessary as a result of the review. Accordingly, the commission readopts all sections in 4 TAC Chapter 60.

This concludes the review of 4 TAC Chapter 60.

TRD-201404469

Gene Snelson  
General Counsel  
Texas Animal Health Commission  
Filed: September 19, 2014



Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules on School Finance; Subchapter BB, Commissioner's Rules on Reporting Requirements; Subchapter CC, Commissioner's Rules Concerning School Facilities; Subchapter DD, Commissioner's Rules Concerning Missing Child Prevention and Identification Programs; Subchapter EE, Commissioner's Rules on Reporting Child Abuse and Neglect; Subchapter FF, Commissioner's Rules Concerning High School Diplomas for Certain Veterans; Subchapter GG, Commissioner's Rules Concerning Counseling Public School Students; Subchapter HH, Commissioner's Rules Concerning Classroom Supply Reimbursement Program; Subchapter II, Commissioner's Rules Concerning High School Allotment; and Subchapter JJ, Commissioner's Rules Concerning Automatic College Admission, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 61, Subchapters AA-JJ, in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3991).

Relating to the review of 19 TAC Chapter 61, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter AA. At a later date, the TEA may propose amendments to align rules with statute and make revisions based on recommendations by the State Auditor's Office.

Relating to the review of 19 TAC Chapter 61, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter BB. At a later date, the TEA may propose an amendment related to bus accident reporting.

Relating to the review of 19 TAC Chapter 61, Subchapter CC, the TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rules. The TEA received one comment related to the review of Subchapter CC. Following is a summary of the public comment received and the corresponding response.

Comment: Regarding 19 TAC §61.1034, New Instructional Facility Allotment, the Fast Growth School Coalition commented that the program described in the rule, the New Instructional Facility Allotment

(NIFA) program, is an important one and that the rule should be maintained despite the NIFA program's lack of funding in recent years.

Agency Response: The agency agrees that the NIFA program is an important program and that 19 TAC §61.1034 should be maintained for as long as the program is authorized by statute.

At a later date, the TEA may propose amendments to Subchapter CC related to the instructional facilities allotment, assistance with payment of existing debt, the science laboratory grant program, and the school district and open-enrollment charter school bond enhancement programs.

Relating to the review of 19 TAC Chapter 61, Subchapters DD-FF, the TEA finds that the reasons for adopting Subchapters DD-FF continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapters DD-FF. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 61, Subchapter GG, the TEA finds that the reasons for adopting Subchapter GG continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter GG. At a later date, the TEA may propose an amendment to align the rule with House Bill (HB) 5, 83rd Texas Legislature, Regular Session, 2013.

Relating to the review of 19 TAC Chapter 61, Subchapter HH, the TEA finds that the reasons for adopting Subchapter HH continue to exist and

readopts the rule. The TEA received no comments related to the review of Subchapter HH. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 61, Subchapter II, the TEA finds that the reasons for adopting Subchapter II continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter II. At a later date, the TEA may propose amendments to align rules with current agency practice related to the high school allotment.

Relating to the review of 19 TAC Chapter 61, Subchapter JJ, the TEA finds that the reasons for adopting Subchapter JJ continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter JJ. At a later date, the TEA may propose an amendment to align the rule with HB 5, 83rd Texas Legislature, Regular Session, 2013.

This concludes the review of 19 TAC Chapter 61.

TRD-201404475

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: September 19, 2014



# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas State Affordable Housing Corporation

### Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at the office of the Issuer at, 2200 East Martin Luther King Jr. Blvd., Austin, Texas 78702 on October 27, 2014 at 2:00 p.m., on the proposed issuance by the Issuer of one or more series of multifamily housing revenue bonds (the "Bonds") to provide financing for the construction and equipping of a multifamily housing project to be known as Palladium Midland Apartments consisting of an apartment building or buildings containing approximately 264 units (the "Project"), as well as to fund any working capital for the Project, any reserve funds and costs of issuance for the Bonds. The Project will be located at 2200 Lamesa Blvd., Midland, Midland County, Texas, and will be owned by THF Palladium Midland, LTD. and its successors and assigns, and will be operated by Omnium Management Company. The maximum aggregate face amount of the Bonds to be issued with respect to the Project is \$25,000,000.

All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Project and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to the Issuer at 2200 East Martin Luther King Jr. Blvd., Austin, Texas 78702, Attention: David W. Danenfelzer; (512) 477-3562.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at (512) 477-3560 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Danenfelzer at [ddanenfelzer@tsahc.org](mailto:ddanenfelzer@tsahc.org).

David Danenfelzer

Manager of Development Finance Programs

Texas State Affordable Housing Corporation

2200 East Martin Luther King Jr. Blvd.

Austin, Texas 78702

TRD-201404522

David Long

President

Texas State Affordable Housing Corporation

Filed: September 23, 2014

## Texas Department of Agriculture

### Request for Applications: 2015 Young Farmer Grant Program

**Purpose.** Pursuant to the Texas Agriculture Code, §58.091, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant (YFG) program. The YFG is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFE). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

TAFE's Young Farmer Grant Program aims to:

Grow and support Texas agriculture - so as not to have to ship products from other states, including deficit commodities;

Help grow an operation that also impacts the community; and

Help meet a financial need that is otherwise not met.

**Eligibility.** Grant applications will be accepted from any person 18 years or older, but younger than 46 years of age as of the time of the grant award, who is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

**Funding Parameters.** Selected grantees will receive funding for their projects on a cost reimbursement basis. Funds will not be advanced to grantees. Selected grantees must have the financial capability to pay all costs upfront.

The TAFE Board of Directors (board) anticipates total funding of \$150,000 will be available for grant awards of not less than \$5,000 and or more than \$10,000 for each grantee selected to receive an award under the program.

The TAFE board reserves the right to fully or partially fund any particular grant application. The grant award does not include required Grantee Matching Funds. Grantees will be required to meet a 1:1 match. For every dollar requested, the grantee must show expenditure, prior to reimbursement, of at least an equal amount of Grantee Matching Funds from allowable sources. Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, applicants will be informed accordingly.

**Application Requirements.** To be considered, applications must be complete and submitted on Form GTBD-108. An application and information can be downloaded from TDA's Grants Office under the Grants and Services tab at [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov).

The complete application packet including the proposal with signatures must be received by Monday, October 20, 2014.

For questions regarding submission of the proposal and/or TDA requirements, please contact the Grants Office at (512) 463-6908, or by email at [Grants@TexasAgriculture.gov](mailto:Grants@TexasAgriculture.gov).

**Texas Public Information Act.** Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201404531

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: September 23, 2014

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**Office of the Attorney General**

Texas Water Code and Texas Health and Safety Code  
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Tire Recycling and Processing, LLC*, Cause No. D-1-GV-14-000171; in the 53rd Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant Tire Recycling and Processing, LLC ("TRP") owns and operates a tire recycling and processing facility in Harlingen, Cameron County, Texas. The State alleges that TRP exceeded its authorized storage capacity of tires and tire pieces, stored tires and tire pieces outdoors, exceeded permitted air emissions, and failed to maintain accurate records of its operations.

Proposed Agreed Judgment: The Agreed Final Judgment orders TRP to pay civil penalties in the amount of \$197,750. The Judgment also awards attorney's fees to the State in the amount of \$37,500.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Environmental Protection Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201404525

Katherine Cary

General Counsel

Office of the Attorney General

Filed: September 23, 2014

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Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or

considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. McMullen County Water Control and Improvement District No. 1*, Cause No. D-1-GV-14-000449; in the 200th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant McMullen County WCID is a water control and improvement district located in McMullen County, Texas. The State initiated this suit to enforce Texas statutes and rules governing water districts. Specifically, Defendant had failed to submit its annual financial reporting documents to the Texas Commission on Environmental Quality ("TCEQ") for fiscal years 2008 to 2013.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment and Permanent Injunction ("Judgment") requires Defendant to submit all outstanding reporting documents to TCEQ within six months of the Judgment, and to make timely submissions of such documents for the next five fiscal years. It assesses civil penalties against Defendant in the amount of \$5,000, and awards the State its reasonable attorney's fees in the amount of \$3,500, as well as costs of court.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the Judgment, and written comments on the proposed settlement, should be directed to Sireesha Chirala, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201404477

Katherine Cary

General Counsel

Office of the Attorney General

Filed: September 19, 2014

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**Comptroller of Public Accounts**

Certification of Probable Revenue for State Fiscal Biennium  
Ending August 31, 2015

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has estimated, as required by Tax Code, §171.0023(d), that the probable revenue for the state fiscal biennium ending August 31, 2015, will exceed probable revenue as stated in the comptroller's Biennial Revenue Estimate for the 2014-2015 fiscal biennium by an amount sufficient to offset the loss in probable revenue that will result if taxable entities elect to compute the tax at the rates provided by Tax Code, §171.0023(a) and (b).

Therefore, pursuant to Tax Code, §171.0023(a) and (b), a taxable entity may elect to pay the Franchise Tax at a rate of 0.95% of taxable margin and a taxable entity primarily engaged in retail or wholesale trade may elect to pay the Franchise Tax at a rate of 0.475% of taxable margin for reports originally due on or after January 1, 2015, and before January 1, 2016.

Inquiries should be submitted to Teresa G. Bostick, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201404484

Ashley Harden

General Counsel

Comptroller of Public Accounts

Filed: September 19, 2014

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Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Chapter 403, Texas Government Code; and the Education Code, the Texas Comptroller of Public Accounts ("Comptroller"), on behalf of the Texas Prepaid Higher Education Tuition Board ("Board"), announces the issuance of a Request for Proposals ("RFP #212a") from qualified, independent individuals and firms to provide specialized Internal Revenue Code ("IRC") Section 529 consulting services to Comptroller and Board. The successful respondent(s) will assist Comptroller and the Board in continuing to administer the Texas Guaranteed Tuition Plan, the Texas College Savings Plan(r), the LoneStar 529 Plan(r), the Texas Tuition Promise Fund(r), the Texas Save and Match Program and the Board's other related programs. Comptroller reserves the right to select multiple contractors to participate in conducting the reviews as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about December 31, 2014 or as soon thereafter as practical.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, October 3, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact William George, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, 111 E. 17th St., Rm 201, Austin, Texas, 78774 ("Issuing Office"), telephone number: (512) 305-8673.

Questions: All questions regarding the RFP must be sent via facsimile to Mr. George at: (512) 463-3669, not later than 2:00 p.m. CT, on Friday, October 10, 2014. Official responses to questions received by the foregoing deadline will be posted electronically on the ESBD on or about Friday, October 17, 2014, or as soon thereafter as practical. Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Questions in the Issuing Office.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, October 31, 2014. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. The Board reserves the right to award one or more contracts under this RFP. The Board and Comptroller reserve the right to accept or reject any or all proposals submitted. The Board and Comptroller are under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Board and Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - October 3, 2014, after 10:00 a.m. CT; Questions Due - October 10, 2014, 2:00 p.m. CT; Official Responses to Questions Posted - October 17, 2014, or as soon thereafter as practical; Proposals Due - October 31, 2014, 2:00 p.m. CT; Contract Execution - December 31, 2014, or as soon thereafter as practical; Commencement of Work - December 31, 2014, or as soon thereafter as practical.

TRD-201404542

Jette Withers  
Deputy General Counsel for Contracts  
Comptroller of Public Accounts  
Filed: September 24, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/29/14 - 10/05/14 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 09/29/14 - 10/05/14 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201404524  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: September 23, 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 **November 3, 2014**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 3, 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: Allan Badshah Incorporated dba Bobs Corner Store 2; DOCKET NUMBER: 2014-0811-PST-E; IDENTIFIER: RN102457561; LOCATION: Bishop, Nueces County; TYPE OF FACILITY: retail convenience facility with petroleum storage tanks; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2) COMPANY: Apache Corporation; DOCKET NUMBER: 2014-0495-AIR-E; IDENTIFIER: RN105148613; LOCATION: Wheeler County; TYPE OF FACILITY: natural gas production plant; RULES VIOLATED: 30 TAC §101.201(b) and §122.143(4), Federal Operating Permit (FOP) Number O2964/General Operating Permit (GOP) Number 514, Site-Wide Requirements (b)(28)(F), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain a complete final record for a non-reportable emissions event; 30 TAC §116.615(4) and (5) and §122.143(4), FOP Number O2964/GOP Number 514, Site-Wide Requirements (b)(8)(E)(ii), and THSC, §382.085(b), by failing to provide a timely notification of the start of construction, completion of construction, and commencement of operations to the TCEQ Amarillo Regional Office; 30 TAC §116.615(10) and §122.143(4), Standard Permit Registration Number 81348, FOP Number O2964/GOP Number 514, Site-Wide Requirements (b)(8)(B), and THSC, §382.085(b), by failing to limit blowdown events to approximately 24 per year with each event lasting no longer than one hour and venting no more than 15,000 standard cubic feet; 30 TAC §122.143(4) and §122.146(2), FOP Number O2964/GOP Number 514, Site-Wide Requirements (b)(2), and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145, FOP Number O2964/GOP Number 514, Site-Wide Requirements (b)(2), and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: \$25,071; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Bio Energy (Austin), LLC; DOCKET NUMBER: 2014-1121-AIR-E; IDENTIFIER: RN100632629; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: electric power generation; 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 O2621, 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 §122.143(4) and §122.145(2), THSC, §382.085(b), and FOP Number O2621, GTC, by failing to submit a deviation report within 30 days after the end of the reporting period; PENALTY: \$5,626; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: BRUSH COUNTRY DEVELOPMENT CORPORATION; DOCKET NUMBER: 2014-0805-PWS-E; IDENTIFIER: RN106103765; LOCATION: Freer, Duval County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c)(6) and (e) and §290.122(c)(2)(A) and (f), by failing to collect routine nitrate samples and provide the results to the executive director for the second through fourth quarters of 2013 and failed to timely provide public notification and timely submit a copy of the public notification to the executive director regarding the failure to

collect nitrate samples for the second quarter of 2013; and 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and timely submit a copy of the public notification to the executive director regarding the failure to collect routine distribution coliform samples for the months of January and February 2012; PENALTY: \$799; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(5) COMPANY: City of Denison; DOCKET NUMBER: 2014-0532-MWD-E; IDENTIFIER: RN102992567; LOCATION: Denison, Grayson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and §315.1, and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010079003, Contributing Industries and Pretreatment Requirements Number 1, by failing to submit a modification to the facility's pretreatment program containing all required streamlining rule provisions to the executive director within 12 months of the date the permit was issued; 30 TAC §315.1, 40 Code of Federal Regulations (CFR) §403.8(f)(5)(ii), and TPDES Permit Number WQ0010079003, Contributing Industries and Pretreatment Requirements Numbers 1(c) and (d), by failing to implement an approved enforcement response plan that describes the type of escalating enforcement processes the respondent will take in response to all industrial user violations; and 40 CFR §403.8(f)(2)(iv) and §12(g)(6), and TPDES Permit Number WQ0010079003, Contributing Industries and Pretreatment Requirements Number 1(d), by failing to analyze self-monitoring reports and implement procedures to ensure compliance with the requirements of a pretreatment program; PENALTY: \$11,818; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Jacksonville; DOCKET NUMBER: 2014-0826-MWD-E; IDENTIFIER: RN101613305; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010693001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$12,375; Supplemental Environmental Project offset amount of \$9,900 applied to City-wide Cleanup; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Panorama Village; DOCKET NUMBER: 2014-1082-MWD-E; IDENTIFIER: RN102178183; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011097001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Darryl Wheeler dba Magnolia Lake RV Park; DOCKET NUMBER: 2014-0624-PWS-E; IDENTIFIER: RN101237154; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, analytical procedures, distribution schematic and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(i),

by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections or other unacceptable plumbing practices are permitted; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.45(b)(1)(E)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of at least 1.0 gallons per minute for each connection; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the well; and 30 TAC §290.45(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences or establishments where an actual or potential contamination hazard exists; PENALTY: \$925; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Doyle W. Foster dba Weir Country Store; DOCKET NUMBER: 2014-0938-PST-E; IDENTIFIER: RN102054228; LOCATION: Weir, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and failed to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$7,255; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(10) COMPANY: FELDER'S WHOLESAL, INCORPORATED; DOCKET NUMBER: 2014-0761-PST-E; IDENTIFIER: RN101664126; LOCATION: Brenham, Washington County; TYPE OF FACILITY: transporter; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3467(d), by failing respondent deposited a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$2,350; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Golden SA Properties, LLC and Doucet Plumbing, Incorporated; DOCKET NUMBER: 2014-1112-OSS-E; IDENTIFIER: RN106600927; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.3(a) and (b)(1) and Texas Health and Safety Code, §366.051(a), by failing to obtain authorization prior to constructing, installing, and operating an OSSF; PENALTY: \$787; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(12) COMPANY: Harisith, Incorporated dba Times Market 19; DOCKET NUMBER: 2014-0986-PST-E; IDENTIFIER: RN104197512; LOCATION: Sinton, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month and failed 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: \$4,630; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616;

REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: HEB Grocery Company, LP; DOCKET NUMBER: 2014-0935-PST-E; IDENTIFIER: RN101761385; LOCATION: Portland, San Patricio County; TYPE OF FACILITY: grocery store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: Highline Real Estate Group, LLC; DOCKET NUMBER: 2014-0818-EAQ-E; IDENTIFIER: RN107123101; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(15) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2013-1814-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1959, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 19, and New Source Review (NSR) Permit Number 19005, Special Conditions (SC) Number 1, by failing to comply with maximum allowable emissions rates; 30 TAC §101.20(1), 116.115(c), and 122.143(4), THSC, §382.085(b), 40 Code of Federal Regulations §60.44b(i) and (l) and §60.46b(a), FOP Number O1959, GTC and STC Number 19, and NSR Permit Number 2796A, SC Number 1, by failing to comply with the allowable emissions limit; and 30 TAC §106.6(a) and (c) and §122.143(4), THSC, §382.085(b), FOP Number O1959, GTC and STC Numbers 19 and 20, and Permit By Rule Registration Number 89987, by failing to comply with certified emissions limits; PENALTY: \$56,688; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Northwoods Avery Ranch, LLC; DOCKET NUMBER: 2014-0948-EAQ-E; IDENTIFIER: RN105998025; LOCATION: Austin, Williamson County; TYPE OF FACILITY: residential development; RULES VIOLATED: 30 TAC §213.5(f)(2)(B), Organized Sewage Collection System Plan 11-10082501 Standard Conditions Number 8, and Water Pollution Abatement Plan 11-13021201 Standard Conditions Number 10, by failing to immediately suspend regulated activities until receiving executive director approval for the methods proposed to protect a sensitive feature encountered during construction activities; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(17) COMPANY: PATRIOT DOZER SERVICE, L.L.C. dba TINDOL CONSTRUCTION; DOCKET NUMBER: 2014-0759-MLM-E; IDENTIFIER: RN107193724; LOCATION: Bee County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §342.25, by failing to register the site as an aggregate production operation prior to commencing regulated activities by February 14, 2014; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater runoff associated with industrial activities under Texas Pollutant

Discharge Elimination System Multi-Sector General Permit Number TXR050000; PENALTY: \$8,375; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: Port Central Service Center LP; DOCKET NUMBER: 2014-1086-PWS-E; IDENTIFIER: RN104394283; LOCATION: La Porte, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect semiannual 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; PENALTY: \$2,557; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: SILVER CREEK VILLAGE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-0849-PWS-E; IDENTIFIER: RN101459725; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level of (MCL) 5 pCi/L based on the running annual average for combined radium-226 and radium-228; and 30 TAC §290.108(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 15 pCi/L for gross alpha particle activity based on the running annual average; PENALTY: \$1,098; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(20) COMPANY: STAR FUELS, INCORPORATED dba Gulfway Citgo; DOCKET NUMBER: 2014-1100-PST-E; IDENTIFIER: RN106511421; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(A), by failing to obtain an underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2014-0878-MWD-E; IDENTIFIER: RN102315553; LOCATION: Tennessee Colony, Anderson County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011915001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; PENALTY: \$10,125; Supplemental Environmental Project offset amount of \$8,100 applied to Texoma Council of Governments; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: Tomahawk Resources, LLC; DOCKET NUMBER: 2014-0435-MLM-E; IDENTIFIER: RN107088726; LOCATION: Banquete, Nueces County; TYPE OF FACILITY: fleet facility; RULES VIOLATED: 30 TAC §330.15(a)(1) and TWC, §26.121, by failing to prevent the unauthorized disposal of municipal solid waste (MSW) into or adjacent to waters in the state; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$11,134; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(23) COMPANY: Total Petrochemicals & Refining USA, Incorporated; DOCKET NUMBER: 2014-0743-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical refinery; RULES VIOLATED: 30 TAC §101.201(c) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit the final record for Incident Number 188566 within two weeks after the end of the emissions event; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), Federal Operating Permit Number O1267, Special Terms and Conditions Number 29, and New Source Review Permit Numbers 46396, PSDTX1073M1, and N044, Special Conditions Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial notification for a reportable emissions event within 24 hours of discovery; PENALTY: \$83,500; Supplemental Environmental Project offset amount of \$41,750 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Travis Lynn Bishop dba San Jo Utilities Incorporated; DOCKET NUMBER: 2014-0962-MWD-E; IDENTIFIER: RN103935474; LOCATION: Montgomery County; TYPE OF FACILITY: waste water treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014388001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$1,437; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Waterwood Municipal Utility District 1; DOCKET NUMBER: 2014-0590-PWS-E; IDENTIFIER: RN102687886; LOCATION: Pointblank, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of distribution total coliform-positive results on two routine samples collected for the month of May 2013; and 30 TAC §290.110(e)(2) and (5), and §290.111(h)(3) and (12), by failing to submit a surface water monthly operating report to the executive director by the tenth day of the month following the end of the reporting period; PENALTY: \$250; ENFORCEMENT COORDINATOR: Yuliyi Dunaway, 210-403-4077; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201404523  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: September 23, 2014



#### Enforcement Orders

An agreed order was entered regarding Town of Mustang, Docket No. 2012-2160-MWD-E on September 12, 2014 assessing \$25,012 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



A default order was entered regarding Catherine Ann Wagner, Docket No. 2012-2315-MSW-E on September 12, 2014 assessing \$0, in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Austin Equipment Company, LC, Docket No. 2012-2360-EAQ-E on September 12, 2014 assessing \$50,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bri-Mon Enterprises, Inc., Docket No. 2012-2581-PST-E on September 12, 2014 assessing \$11,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Aviation Administration, Docket No. 2012-2695-PST-E on September 12, 2014 assessing \$16,876 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COYANOSA COOPERATIVE GIN dba Coyanosa Fuel Center, Docket No. 2013-0259-PST-E on September 12, 2014 assessing \$11,750 in administrative penalties with \$2,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sandra Ortega, Docket No. 2013-0757-MLM-E on September 12, 2014 assessing \$525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan Guerrero dba E-Z Mart, Docket No. 2013-0851-PST-E on September 12, 2014 assessing \$9,129 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Highway 90, Inc. dba Village Food Store 1, Docket No. 2013-0910-PST-E on September 12, 2014 assessing \$8,850 in administrative penalties with \$1,770 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding David Wise, Administrator of the estate of Bennie Byley, and Pamela Sue Sanderson, Docket No. 2013-1030-MLM-E on September 12, 2014 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arnold Crushed Stone, Inc., Docket No. 2013-1183-AIR-E on September 12, 2014 assessing \$23,222 in administrative penalties with \$4,644 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 HC OILFIELD SERVICES, LLC, Docket No. 2013-1274-MLM-E on September 12, 2014 assessing \$8,069 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 WEIR BROS., INC. dba Weir Brothers Sand Pit, Docket No. 2013-1289-MSW-E on September 12, 2014 assessing \$35,000 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 INS EMERALD, L.L.C. dba Luna Mart, Docket No. 2013-1302-PST-E on September 12, 2014 assessing \$35,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Formosa Retail, Inc. dba Wez Mart 2, Docket No. 2013-1373-PST-E on September 12, 2014 assessing \$11,049 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Maredia Investments Nome LLC dba Big D's, Docket No. 2013-1519-PST-E on September 12, 2014 assessing \$10,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CENTRAL FOODS, INC. dba Pik Nik Foods 14, Docket No. 2013-1623-PST-E on September 12, 2014 assessing \$12,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan M. Bailey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TWINCITY C-STORE INC dba Super Stop 24, Docket No. 2013-1676-PST-E on September 12, 2014 assessing \$7,875 in administrative penalties with \$1,575 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.

A default and shutdown order was entered regarding HAIDER A., INC. dba Stop N Drive, Docket No. 2013-1707-PST-E on September 12, 2014 assessing \$10,808 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of East Tawakoni, Docket No. 2013-1768-MWD-E on September 12, 2014 assessing \$21,388 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Annona, Docket No. 2013-1833-MWD-E on September 12, 2014 assessing \$30,375 in administrative penalties with \$6,075 deferred.

Information concerning any aspect of this order may be obtained by contacting Alan Barraza, Enforcement Coordinator at (512) 239-4642, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPA Pipe & Supply, L.P. dba Smith Pipe of Abilene, Docket No. 2013-1878-AIR-E on September 12, 2014 assessing \$27,600 in administrative penalties with \$5,520 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 City of Follett, Docket No. 2013-1880-PWS-E on September 12, 2014 assessing \$274 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding S.R.R. INVESTMENTS, INC. dba Elroy Country Corner, Docket No. 2013-1960-PST-E on September 12, 2014 assessing \$90,000 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 Marine Quest-Hidden Cove, L.P., Docket No. 2013-1964-MWD-E on September 12, 2014 assessing \$13,175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALIMO INVESTMENTS, INC. dba Shop Rite, Docket No. 2013-1997-PST-E on September 12, 2014 assessing \$9,731 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan M. Bailey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tri Hue Thich dba Linh Son Temple Water System, Docket No. 2013-2056-PWS-E on September 12, 2014 assessing \$2,918 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southern Methodist University, Docket No. 2013-2171-WQ-E on September 12, 2014 assessing \$5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Refining Wholesale, Inc. dba C & R Fuel Control 51, Docket No. 2013-2203-PST-E on September 12, 2014 assessing \$16,751 in administrative penalties with \$3,350 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James W. Jeffcoat dba Lakeshore Sites Water, Docket No. 2013-2212-PWS-E on September 12, 2014 assessing \$1,754 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2013-2221-MWD-E on September 12, 2014 assessing \$29,250 in administrative penalties with \$5,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mauriceville Special Utility District, Docket No. 2014-0074-MWD-E on September 12, 2014 assessing \$27,187 in administrative penalties with \$5,437 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROWENA WATER SUPPLY CORPORATION, Docket No. 2014-0088-PWS-E on September 12, 2014 assessing \$1,281 in administrative penalties with \$1,281 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 Mohammad Aleem dba Camden Store, Docket No. 2014-0091-PST-E on September 12, 2014 assessing \$9,042 in administrative penalties with \$1,808 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S & A OIL CO., INC. dba Handi Stop 104, Docket No. 2014-0092-PST-E on September 12, 2014 assessing \$12,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Marsh Rice University dba Rice University, Docket No. 2014-0117-AIR-E on September 12, 2014 assessing \$15,600 in administrative penalties with \$3,120 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 Tommy Fisher dba Acuff Steak House, Docket No. 2014-0137-PWS-E on September 12, 2014 assessing \$6,480 in administrative penalties with \$6,480 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. 2014-0179-AIR-E on September 12, 2014 assessing \$8,925 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 Kashiz Shah dba Vidor Superette 2, Docket No. 2014-0189-PST-E on September 12, 2014 assessing \$12,844 in administrative penalties with \$2,568 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARY ANNE INC. dba US Trux Stop, Docket No. 2014-0190-PST-E on September 12, 2014 assessing \$9,750 in administrative penalties with \$1,950 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRAZOS VALLEY SEPTIC & WATER, INC., Docket No. 2014-0207-PWS-E on September 12, 2014 assessing \$50 in administrative penalties.

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 Frio LaSalle Pipeline, LP, Docket No. 2014-0212-AIR-E on September 12, 2014 assessing \$102,000 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 Houston Pipe Line Company, LP, Docket No. 2014-0213-AIR-E on September 12, 2014 assessing \$6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Farhaudd Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding DEVELOPMENT II PARTNERS, INC. dba Katy Exxon, Docket No. 2014-0224-PST-E on September 12, 2014 assessing \$94,032 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 The LETCO Group, LLC dba Living Earth Technology, Docket No. 2014-0231-MLM-E on September 12, 2014 assessing \$11,067 in administrative penalties with \$2,213 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 Aqua Utilities, Inc., Docket No. 2014-0237-PWS-E on September 12, 2014 assessing \$345 in administrative penalties with \$345 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 Rip Thornburg dba RRR Construction Enterprises, Docket No. 2014-0254-AIR-E on September 12, 2014 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2014-0300-AIR-E on September 12, 2014 assessing \$31,960 in administrative penalties with \$6,392 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 Davis Gas Processing, Inc., Docket No. 2014-0337-AIR-E on September 12, 2014 assessing \$14,939 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Apple Inc., Docket No. 2014-0419-EAQ-E on September 12, 2014 assessing \$27,000 in administrative penalties with \$5,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201404539

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 24, 2014



### Notice of Water Quality Applications

The following notices were issued on September 12, 2014 through September 19, 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

DOMESTIC PETROCHEMICAL LC which operates the Dome Petrochemical Cedar Bayou Plant, an organic chemical and petroleum processing facility, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004116000, which authorizes the discharge of previously monitored effluent (treated process wastewater, utility wastewater, and contact stormwater at a daily average flow not to exceed 710,000 gallons per day via internal Outfall 101), treated cooling tower blowdown, and non-process area stormwater at an intermittent and flow-variable rate via Outfall 001. The facility is located at 6655 West Bay Road, one mile northwest of the intersection of Texas Spur 99 and Farm-to-Market Road 1405, adjacent to and east of Cedar Bayou, Baytown, Chambers County, Texas 77523.

LOWER COLORADO RIVER AUTHORITY which operates the Sim Gideon Power Plant, has applied for a renewal of TPDES Permit No. WQ0002052000, which authorizes the discharge of once-through cooling water and previously monitored effluent (low volume wastewater on an intermittent and flow-variable basis via internal Outfall 201, metal cleaning waste on an intermittent and flow-variable basis via internal Outfall 301, and treated domestic wastewater on an intermittent and flow-variable basis via internal Outfall 401) at a daily average flow not to exceed 985,000,000 gallons per day via Outfall 001. The facility is located at 257 Power Plant Road, adjacent to Lake Bastrop at the end of County Road 404, approximately one mile northwest of the intersection of County Road 404 and State Highway 21, and approximately four miles northeast of the City of Bastrop, Bastrop County, Texas 78602.

MAVERICK TUBE CORPORATION which operates a steel pipe manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0002365000 to authorize the elimination of, or increase in, the limits for aluminum and to clarify that process wastewater is an approved wastestream. The current permit authorizes the discharge

of cooling tower blowdown, truck wash water, and stormwater at a daily average flow not to exceed 110,800 gallons per day via Outfall 001. The facility is located at 699 Farm-to-Market Road 3083, Conroe, Montgomery County, Texas 77301.

EXXON MOBIL CORPORATION which operates the ExxonMobil Chemical-Mont Belvieu Plastics Plant, a polyethylene and catalyst manufacturing plant, has applied for a major amendment of TPDES Permit No. WQ0002546000 related to construction of a new polyethylene production unit. The request is for an increase in process wastewater, cooling tower blowdown, boiler blowdown, water treatment wastewaters, and stormwater discharges, which will increase the daily average flow from 1.95 MGD to 4.233 MGD via Outfall 001 and increase effluent loading, based on the increase in production. The existing permit authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, water treatment wastewaters, and stormwater discharges at a daily average flow of 1.95 MGD via Outfall 001. The facility is located at 13330 Hatcherville Road, immediately west of the Union Pacific Railroad line (about 1 mile west of Highway 146) and immediately east of Hatcherville Road and approximately 2 miles northwest of the City of Mont Belvieu, Chambers and Liberty County, Texas 77580.

BEST SEA-PACK OF TEXAS INC has applied for a major amendment to TPDES Permit No. WQ0003116000 to authorize seasonal effluent limitations for ammonia nitrogen from September through May at Outfall 001. The current permit authorizes the discharge of process wastewater, previously monitored effluent (treated domestic wastewater), and stormwater at a daily average flow not to exceed 260,000 gallons per day via Outfall 001. The facility is located on County Road 171 approximately 1.6 miles west of the intersection of County Road 171 and County Road 203, northeast of the City of Danbury, Brazoria County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

RANDY EARL WYLY AND TWO SISTERS DAIRY LLC for a major amendment of TPDES Permit No. WQ0003190000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to reconfigure drainage area to actual surface acres of RCS #1, and reduce the total land application area from 159 acres to 150 acres. The currently authorized maximum capacity of 2,950 head, of which 1,800 head are milking cows, remains unchanged. The facility is located on the east side of County Road 209, approximately 4 miles south of the intersection of US Highway 67 and County Road 209, which is approximately 7 miles southeast of the intersection of US Highway 67 and US Highway 281 in Erath County, Texas.

GENTEX POWER CORPORATION P.O. Box 1605, Austin, Texas 78767, which operates the Lost Pines 1 Power Plant, a combined cycle electric generating facility, has applied for a major amendment to, and renewal of, TPDES Permit No. WQ0004155000 to authorize the addition of new internal Outfall 401 consisting of heat recovery steam generator wastewater and boiler cleaning wastewater on an intermittent and flow-variable basis; the addition of groundwater to the reverse osmosis system and receipt of oily wastewater from Sim Gideon and Winchester Power Plants to be treated at this facility and discharged via internal Outfall 101; and a reduction in the sampling frequency at internal Outfalls 101 and 301 from a weekly to monthly basis for TSS, COD, oil and grease, and pH. The existing permit authorizes the discharge of low-volume wastewater and stormwater runoff on an intermittent and flow-variable basis via internal Outfall 101; domestic wastewater on an intermittent and flow-variable basis via internal Outfall 201; and low-volume wastewater on an intermittent and flow-variable basis via

internal Outfall 301. The facility is located at 257 Power Plant Road, adjacent to Lake Bastrop, approximately five miles northeast of the City of Bastrop on State Highway 21, Bastrop County, Texas 78602.

CRUTCHER TIE & LUMBER LLC proposes to operate Crutcher Tie & Lumber WWTP, has applied for new permit TPDES Permit No. WQ0005120000 to authorize the discharge of wet decking water and contact stormwater on an intermittent and flow-variable basis via Outfall 001. The facility is located at 4890 North State Highway 37, approximately one and a half miles north of the City of Winnsboro, Wood County, Texas 75494.

CITY OF EDNA has applied for a renewal of TPDES Permit No. WQ0010164001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located at 700 Parkmoor Boulevard, in the City of Edna, Jackson County, Texas 77957.

CITY OF CORPUS CHRISTI has applied for a renewal of TPDES Permit No. WQ0010401006, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The facility is located at 4101 Allison Road in the northwest portion of the City of Corpus Christi approximately 1 mile north of Interstate Highway 37 in Nueces County, Texas 78410.

CITY OF BELLAIRE has applied for a renewal of TPDES Permit No. WQ0010550001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 4401 Edith Street, Bellaire in Harris County, Texas 77401.

CROSBY MUD has applied for a renewal of TPDES Permit No. WQ0011388001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility is located at 5703 Avenue E, approximately one-half mile southwest of the intersection of Farm-to-Market Road 2100 and the Southern Pacific Railroad in the City of Crosby in Harris County, Texas 77532.

CITY OF PFLUGERVILLE has applied for a renewal of TPDES Permit No. WQ0011845002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,850,000 gallons per day. The existing permit also includes the following authorizations: composting of sewage sludge at the treatment facility; distribution and marketing of sludge; and land application of Class A sludge on property owned, leased, or under the direct control of the permittee. The facility is located at 15500 Sun Light Near Way, #B, Pflugerville, in Travis County, Texas 78660.

UTILITIES INVESTMENT COMPANY INC has applied for a renewal of TPDES Permit No. WQ0013850001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located 4500 feet south of Farm-to-Market Road 2154 on Koppe Bridge Road and approximately 1 mile south of Wellborn in Brazos County, Texas 77845.

CORIX UTILITIES TEXAS INC has applied for a renewal of TPDES Permit No. WQ0013977001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 1,000 feet north of State Highway 71 at a point 11,500 feet northwest (along State Highway 71) of the intersection of State Highway 71 and Farm-to-Market Road 1209 in Bastrop County, Texas 78612.

WILBARGER CREEK MUNICIPAL UTILITY DISTRICT NO 2 has applied for a renewal of TPDES Permit No. WQ0014189001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 12217 Old Highway 20, approximately 500 feet south of the

Austin and Northwestern Railway, and 3,000 feet south of the intersection of State Highway Loop 212 and U.S. Highway 290 in Travis County, Texas 78653.

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO 12 has applied for a major amendment to TCEQ Permit No. WQ0014534001, to authorize the addition of an Interim I phase for the disposal of treated domestic wastewater at a daily average flow not to exceed 0.175 million gallons per day (MGD) and maintain the Interim II phase of 0.315 MGD and the Final phase of 0.63 MGD. The major amendment also reduces the surface irrigation of non-public access land from the current permits 131 acres in the Interim phase, 262 acres in the Final phase to an Interim I phase of 51.1 acres, an Interim II phase of 92.0 acres and a Final phase with 184 acres. The total effluent storage volume of 180 acre-feet in the current permit is reduced to a total capacity of 116 acre-feet. Application rate to the irrigated land is to be increased in all phases from 2.69 acre-feet per year per acre to a rate of 3.83 acre-feet per year per acre irrigated. 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 0.5 mile east of the intersection of Highway 71 and Bee Creek Road and approximately 3.6 miles west-southwest of the intersection of Ranch-to-Market Road 620 and Lakeway Boulevard in Travis County, Texas 78669.

AUSTIN RECOVERY INC has applied for a renewal of TCEQ Permit No. WQ0014718001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day subsurface drip irrigation system with a minimum area of 285,000 square feet of public access land and surface irrigation of 8.3 acres of public access native grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 13207 Wright Road, approximately 1.4 miles south-southeast from the intersection of Wright Road and Farm-to-Market Road 1327 in Travis County, Texas 78610.

RICE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014846001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 1094 Raider Drive, Altair, approximately 3.0 miles west of the intersection of Highway 90 and Highway 71 in Colorado County, Texas 77412.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010134008 issued to City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581, to correct and change BOD5 to CBOD5. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 1818 Reflection Bay Drive, approximately 1,000 feet north of Shadow Creek Parkway, and approximately 1.25 miles west of the intersection of McHard Road and State Highway 288 in Brazoria County, Texas 77584.

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-201404538

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**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 July 7, 2014 through September 22, 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, September 26, 2014. The public comment period for this project will close at 5:00 p.m. on Monday, October 27, 2014.

**FEDERAL AGENCY ACTIONS:**

**Applicant: The Texas Fuel and Asphalt Co., LLC;**

Location: 0.83 miles WNW of the former Tule Lift Bridge site, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: CORPUS CHRISTI, Texas. LATITUDE & LONGITUDE (NAD 83): Latitude: 27.81592 North; Longitude: 97.46663 West.

Project Description: The applicant proposes to construct four breasting dolphins and two shore anchors with a connecting walkway/pipeway for the on-loading and offloading of petroleum products from barges. The applicant states that no impacts will occur to the approximately 0.13 acres of tidal fringe wetlands and intertidal sand flats found along the property's shoreline. The proposed project would involve the dredging of a 7.23-acre area of open water within Tule Lake Channel to a depth of -25 feet MLT. The dredging profile would consist of a gradual slope (3:1) to the shoreline. The proposed dredging activity would hydraulically and mechanically remove a total of approximately 181,000 cubic yards of material. The applicant is proposing to place the dredged material into one of the following Dredged Material Placement Areas (DMPAs): 1. Tule Lake DMPA - Cells A, B & C; 2. Suntide DMPA; 3. South Shore DMPA - Cells A, B & C; 4. DMPA No. 1; 5. DMPA No. 4; 6. DMPA No. 5; or 7. Herbie Mauer DMPA.

CMP Project No.: 15-1029-F1.

Type of Application: U.S.A.C.E. permit application #SWG-2014-00559. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

**FEDERAL AGENCY ACTIVITIES:**

**Applicant: U.S. Army Corps of Engineers (USACE) and the non-federal sponsor, Harris County Flood Control District (HCFCD);**

Location: The Hunting Bayou watershed is approx. 5 miles northeast of downtown Houston and is divided into the upper, middle and lower

stream reaches. The upper stream reach extends from U.S. Hwy 59 through the Englewood Railroad Yard (ERRY). The middle reach extends from past EERRY to Herman Brown Park, and the lower reach extends from Herman Brown Park to a confluence with the Houston Ship Channel at the Turning Basin.

Project Description: USACE and HCFCD have prepared a draft General Reevaluation Report and Integrated Environmental Assessment (GRR/EA) in accordance with the National Environmental Policy Act (NEPA), Public Law 91190 for the Hunting Bayou Flood Risk Management Project, watershed of Hunting Bayou. On February 12, 1990, USACE issued a report entitled "Buffalo Bayou and Tributaries, Texas Feasibility Report" to plan for flood damage reduction in the greater Houston, Texas area. The plan became authorized under Section 101 (a) (21) of the Water Resources Development Act (WRDA) of 1990. The plan addressed Buffalo Bayou and six of its major tributaries, one of which is Hunting Bayou. The field conditions today differ significantly from the findings upon which the 1990 plan for Hunting Bayou was authorized and justified reexamining the plan's conclusions. The purpose of the GRR/EA is to support a recommendation by the Chief of Engineers that the reevaluated alternative, referenced as the Tentatively Selected Plan (TSP), is within the existing project authorization for Hunting Bayou, Texas (the 1990 Authorized Plan).

The TSP consists of upper stream grass-lined trapezoidal channel modifications with a 60-foot maximum bottom width for a length of 3.8 miles from U.S. Hwy 59 to EERRY, bridge replacements and a 75-acre off-line detention basin at Homestead Road. Channel modifications will result in 17 bridge modifications, 96 utility, storm sewer and pipeline relocations, and removal of several inactive utilities and street segments.

CMP Project No.: 14-1988-F2.

Type of Application: The project is being pursued by USACE and HCFCD under Section 211(f) of the Water Resources Development Act of 1996.

**Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).**

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Mr. Newby at the above address or by email.

TRD-201404547

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

General Land Office

Filed: September 24, 2014

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services (department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the department, Radiation Safety Licensing Branch, has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289 for the noted action. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

**NEW LICENSES ISSUED:**

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Dallas	UT Southwestern Medical Center	L06663	Dallas	00	08/26/14
Throughout Tx	C & J Spec Rent Services Inc. Dbas Casedhole Solutions	L06662	Houston	00	08/22/14

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	27	08/18/14
Arlington	Heartplace P.A.	L05855	Arlington	11	08/27/14
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids South Austin Medical Center	L03273	Austin	96	08/15/14
Austin	Texas Oncology	L06206	Austin	13	08/19/14
Baytown	San Jacinto Methodist Hospital dba Houston Methodist San Jacinto Hospital	L02388	Baytown	64	08/27/14
Baytown	Edward W. Leahey M.D., P.A.	L06014	Baytown	03	08/18/14
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	143	08/20/14
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	96	08/22/14
Conroe	Adnan Afzal M.D., P.A. dba Healing Hearts	L06071	Conroe	06	08/18/14
Corpus Christi	Associates in Heart Disease dba Corpus Christi Heart Clinic and Vascular Institute	L05023	Corpus Christi	21	08/21/14
Cypress	North Cypress Medical Center Operating Co., L.L.C. dba North Cypress Medical Center	L06020	Cypress	28	08/20/14
Dallas	Baylor University Medical Center	L01290	Dallas	124	08/26/14
Dallas	Texas Oncology P.A. dba Sammons Cancer Center	L04878	Dallas	52	08/18/14
Dallas	Medi Physics Inc. dba GE Healthcare	L05529	Dallas	36	08/15/14
Denton	Numed Inc.	L02129	Denton	66	08/15/14
Fort Worth	Columbia Plaza Medical Center of Fort Worth Subsidiary L.P. dba Plaza Medical Center of Fort Worth	L02171	Fort Worth	58	08/28/14

Fort Worth	Baylor All Saints Medical Center Radiology Department	L02212	Fort Worth	94	08/21/14
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	194	08/15/14
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	99	08/18/14
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	112	08/19/14
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	104	08/15/14
Houston	Medi Physics Inc. dba GE Healthcare	L05517	Houston	23	08/15/14
Houston	Triad Isotopes Inc.	L06327	Houston	11	08/22/14
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. Dba Medical Center of Lewisville	L02739	Lewisville	68	08/29/14
Longview	Texas Oncology P.A. dba Longview Cancer Center	L05017	Longview	14	08/26/14
Lubbock	University Medical Center	L04719	Lubbock	133	08/22/14
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	64	08/22/14
McAllen	Texas Oncology P.A. dba South Texas Cancer Center at McAllen	L04880	McAllen	16	08/26/14
Odessa	Texas Oncology P.A. dba West Texas Cancer Center	L05140	Odessa	15	08/15/14
Robstown	US Ecology Texas Inc.	L05518	Robstown	12	08/26/14
Round Rock	Texas Oncology P.A.	L06349	Round Rock	11	08/28/14
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	156	08/18/14
San Antonio	Medi-Physics Inc. dba GE Healthcare	L04764	San Antonio	47	08/15/14
San Antonio	BHS Specialty Network Inc. dba Heart and Vascular Institute of Texas	L06482	San Antonio	05	08/26/14
Texarkana	Collom & Carney Clinic Association	L05524	Texarkana	07	08/25/14
Throughout Tx	Phoenix Non Destructive Testing Co.	L04454	Channelview	63	08/26/14
Throughout Tx	United States Environmental Services L.L.C.	L05801	Deer Park	08	08/26/14
Throughout Tx	Mistras Group Inc.	L06369	Deer Park	18	08/22/14
Throughout Tx	Numed Inc.	L02129	Denton	66	08/15/14
Throughout Tx	The Dow Chemical Company	L00451	Freeport	97	08/29/14
Throughout Tx	BASF Corporation	L01021	Freeport	58	08/20/14
Throughout Tx	Professional Service Industries Inc.	L06169	Harker Heights	01	08/22/14
Throughout Tx	Arends Inspection L.L.C.	L06333	Houston	06	08/22/14
Throughout Tx	Munilla Construction Management L.L.C. dba MCM	L06628	Irving	02	08/26/14
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	147	08/21/14
Throughout Tx	Eagle Inspection L.L.C.	L06631	Nederland	02	08/22/14
Throughout Tx	Advanced Inspection Technologies L.L.C.	L06608	Spring	01	08/19/14
Victoria	Citizens Medical Center	L00283	Victoria	88	08/25/14

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	142	08/18/14
Edinburg	The University of Texas Pan American	L00656	Edinburg	36	08/22/14
Throughout Tx	Nuclear Scanning Services Inc.	L04339	Houston	28	08/27/14
Throughout Tx	Clean Harbors Deer Park L.L.C.	L02870	La Porte	27	08/19/14



TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Fort Worth	Radiology Associates	L03953	Fort Worth	73	08/18/14
Houston	The Zimmerman Medical Clinic	L00244	Houston	25	08/18/14
Throughout Tx	CTL Thompson Texas L.L.C.	L04900	Dallas	18	08/26/14

TRD-201404544  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services

Filed: September 24, 2014



Licensing Actions for Radioactive Materials

The Department of State Health Services (department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the department, Radiation Safety Licensing Branch, has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289 for the noted action. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

**NEW LICENSES ISSUED:**

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Arlington	Arlington Medical Imaging L.L.C.	L06664	Arlington	00	09/09/14
Throughout Tx	Hydrochem L.L.C.	L06665	Deer Park	00	09/15/14

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	28	09/05/14
Arlington	Texas Health Arlington Memorial Hospital	L02217	Arlington	107	09/03/14
Arlington	Texas Health Arlington Memorial Hospital	L02217	Arlington	108	09/15/14
Arlington	Texas Oncology P.A. dba Texas Cancer Center Arlington	L05116	Arlington	25	09/02/14
Arlington	USMD Hospital at Arlington	L05727	Arlington	19	08/28/14
Arlington	Heartplace P.A.	L05855	Arlington	12	09/10/14
Austin	Thermo Finnigan L.L.C.	L01186	Austin	51	09/03/14
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba North Austin Medical Center	L04910	Austin	96	09/02/14
Austin	Texas Oncology	L06206	Austin	14	09/15/14
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids Medical Center	L06335	Austin	16	09/05/14
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	144	09/09/14
Brownsville	JRG Medical Equipment L.P. dba Medical Associates of Brownsville	L05831	Brownsville	07	09/09/14
Cleveland	Nadim M. Zacca M.D., P.A.	L05570	Cleveland	08	09/11/14
College Station	Texas A&M University	L06561	College Station	02	09/15/14
Conroe	CHCA Conroe L.P. dba Conroe Regional Medical Center	L01769	Conroe	98	09/03/14
Conroe	Arif Abdullah M.D., P.A.	L06276	Conroe	03	09/02/14
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	102	09/02/14
Corpus Christi	Radiology & Imaging of South Texas L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	38	09/05/14
Cypress	North Cypress Medical Center Operating Co., L.L.C.	L06020	Cypress	28	09/11/14

	dba North Cypress Medical Center				
Dallas	IBA Molecular North America Inc. dba IBA Molecular	L06174	Dallas	13	09/11/14
Dallas	Crown Imaging L.L.C.	L06223	Dallas	08	09/11/14
Dallas	Truradiation Partners North Dallas L.L.C. dba Northpoint Cancer Center	L06645	Dallas	01	09/15/14
Deer Park	Total Petrochemicals & Refining USA Inc.	L00302	Deer Park	62	09/11/14
El Paso	Cardinal Health	L01999	El Paso	121	09/11/14
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	24	09/11/14
Fort Worth	Heart Center of North Texas P.A.	L05338	Fort Worth	18	09/12/14
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L00650	Houston	93	09/15/14
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	149	09/04/14
Houston	Ben Taub General Hospital	L01303	Houston	87	09/04/14
Houston	Memorial Hermann Health System dba Memorial Hermann Sugarland Hospital	L03457	Houston	46	09/04/14
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	113	09/15/14
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L05472	Houston	53	09/15/14
Houston	Heart Care Center of Northwest Houston P.A.	L05539	Houston	19	09/11/14
Houston	Memorial Hermann Medical Group	L06430	Houston	12	09/04/14
Irving	Dallas-Ft Worth Veterinary Imaging Center dba Animal Imaging	L04602	Irving	16	09/15/14
Killeen	Lockheed Martin Corporation	L06653	Killeen	01	09/10/14
La Porte	E. I. Dupont De Nemours & Company	L00314	La Porte	90	09/10/14
La Porte	Total Petrochemicals & Refining USA Inc.	L04640	La Porte	31	09/15/14
Lubbock	University Medical Center	L04719	Lubbock	134	09/02/14
McAllen	Texas Oncology P.A. dba South Texas Cancer Center at McAllen	L04880	McAllen	17	09/09/14
McKinney	Baylor Medical Centers at Garland and McKinney dba Baylor Medical Center at McKinney	L06470	McKinney	05	09/15/14
Mineral Wells	Pecofacet US Inc.	L00330	Mineral Wells	43	09/08/14
Nocona	Nocona Hospital District dba Nocona General Hospital	L04977	Nocona	17	09/04/14
Plano	Heartplace P.A.	L05699	Plano	12	09/15/14
Plano	Physician Reliance Network Inc. dba Texas Oncology Plano West Cancer Center	L05896	Plano	25	09/03/14
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	46	09/02/14
Round Rock	Texas Oncology P.A.	L06349	Round Rock	12	09/02/14
San Antonio	Medical and Radiation Physics Inc.	L01417	San Antonio	34	09/15/14
San Antonio	Southwest Research Institute	L04958	San Antonio	17	09/11/14
San Antonio	PETNET Solutions Inc.	L05569	San Antonio	28	09/10/14
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	51	09/15/14
Sherman	North Texas Cardiology L.L.P.	L05395	Sherman	15	09/04/14
Sweetwater	Ludlum Measurements Inc.	L01963	Sweetwater	104	09/03/14
Taylor	Scott & White Hospital - Taylor	L03657	Taylor	35	09/05/14
Throughout Tx	Eagle NDT L.L.C.	L06176	Abilene	20	09/02/14
Throughout Tx	Fox NDE L.L.C.	L06411	Abilene	09	09/02/14
Throughout Tx	Desert NDT L.L.C. dba Midwest Inspection Services	L06462	Abilene	21	09/09/14
Throughout Tx	Lind & Associates Inc. dba T & N Laboratories & Engineering	L04417	Beaumont	18	09/10/14
Throughout Tx	Weatherford International L.L.C.	L04286	Benbrook	104	09/03/14
Throughout Tx	Rock Engineering and Testing Laboratory Inc.	L05168	Corpus Christi	14	09/03/14
Throughout Tx	Qualspec Services L.L.C.	L06351	Corpus Christi	08	09/10/14

	dba Qualspec				
Throughout Tx	National Inspection Services L.L.C.	L05930	Crowley	35	09/02/14
Throughout Tx	Alpha Testing Inc.	L03411	Dallas	25	09/05/14
Throughout Tx	Alliance Geotechnical Group Inc.	L05314	Dallas	27	09/04/14
Throughout Tx	Millennium Engineers Group Inc.	L05388	Edinburg	10	09/04/14
Throughout Tx	Professional Service Industries Inc.	L06332	Grapevine	06	09/12/14
Throughout Tx	OSCS Inc.	L05813	Haltom City	11	09/03/14
Throughout Tx	D-Arrow Inspection Inc.	L03816	Houston	86	09/08/14
Throughout Tx	Geoscience Engineering & Testing Inc.	L05180	Houston	14	09/03/14
Throughout Tx	J V Industrial Co. Ltd.	L05785	La Porte	14	09/05/14
Throughout Tx	Furmanite America Inc.	L06554	La Porte	10	09/03/14
Throughout Tx	Hi-Tech Testing Service Inc.	L05021	Longview	106	09/03/14
Throughout Tx	Fugro Consultants Inc.	L04322	Pasadena	110	09/05/14
Throughout Tx	Petrochem Inspection Services Inc.	L04460	Pasadena	120	09/05/14
Throughout Tx	Braun Intertec Corporation	L06643	San Antonio	02	09/03/14
Throughout Tx	Weaver Services Inc. dba WSI Cased Hole Specialist	L01489	Snyder	37	09/02/14
Tomball	Arvind M. Pai M.D., P.A.	L06008	Tomball	09	09/05/14
Tyler	Specialty Physicians of East Texas P.A. dba TIMA	L05597	Tyler	11	09/03/14

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Amarillo	Cardiology Center of Amarillo L.L.P.	L05736	Amarillo	15	09/08/14
Dallas	North Texas Heart Center P.A.	L04608	Dallas	39	09/08/14
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	44	09/03/14
Humble	Madaiah Revana M.D., P.A.	L03263	Humble	10	09/08/14
McKinney	Raytheon Company	L05632	McKinney	09	09/10/14

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Throughout Tx	Casedhole Solutions Inc.	L06356	Midland	10	09/02/14

TRD-201404545  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: September 24, 2014



Maximum Fees Allowed for Providing Health Care Information Effective October 3, 2014

The Texas Department of State Health Services licenses and regulates the operation of general and special hospitals in accordance with Texas Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended this law to address the release and confidentiality of health care information. In 2009, the Texas Legislature amended the statute again to change the definition of health care information and to add a category of fees for records provided on digital or other electronic media and delivered electronically.

In accordance with Health and Safety Code, §241.154(e), the fee effective as of October 2013, for providing a patient's health care information has been adjusted by increasing by 1.9% the 2013 rate to reflect the most recent changes to the consumer price index that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers as published by the Bureau of Labor Statistics of the United States Department of Labor.

Health and Safety Code, §241.154(b) - (d) Provisions:

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

- (1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed \$45.88; and

- (A) a charge for each page of:
  - (i) \$1.54 for the 11th through the 60th page of provided copies;
  - (ii) \$.76 for the 61st through the 400th page of provided copies;
  - (iii) \$.41 for any remaining pages of the provided copies; and
- (B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;
- (2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$69.88; and
  - (A) \$1.54 per page thereafter; and
  - (B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or
- (3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:
  - (A) a retrieval or processing fee, which may not exceed \$83.12; and
  - (B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.
- (c) In addition, the hospital or its agent may charge a reasonable fee for:
  - (1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and
  - (2) written responses to a written set of questions, not to exceed \$10.00 for a set.
- (d) A hospital may not charge a fee for:
  - (1) providing health care information under subsection (b) to the extent the fee is prohibited under Health and Safety Code, Chapter 161, Subchapter M;
  - (2) a patient to examine the patient's own health care information;
  - (3) providing an itemized statement of billed services to a patient or third-party payer, except as provided under Health and Safety Code, §311.002(f); or
  - (4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

This information is provided only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that fees for health care information are charged in accordance with Health and Safety Code, Chapters 241, 311, and 324.

The statutes referenced in this notice may be found on the Internet at: Health and Safety Code, <http://www.statutes.legis.state.tx.us?link=HS> Labor Code, <http://www.statutes.legis.state.tx.us?link=LA>

Civil Practice and Remedies Code, <http://www.statutes.legis.state.tx.us?link=CP>

Should you have questions, you may contact the Department of State Health Services, Facility Licensing Group, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6648.

TRD-201404548

Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: September 24, 2014

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## Texas Department of Housing and Community Affairs

### Notice of Request for Proposal

#### Section 811 Project Rental Assistance (PRA) Program

**SUMMARY.** The Texas Department of Housing and Community Affairs (the "Department") is requesting responses to a Request for Proposal (RFP) in order to explore contracting with one or more vendors to assist with the Tenant Rental Assistance Certification System (TRACS) and Enterprise Income Verification (EIV) responsibilities for the properties and/or the TRACS responsibilities for the Department as the Grantee for the Section 811 PRA program. Vendors may choose to respond to one or both of the scopes of work as outlined in this RFP. The options for responses from interested vendors includes: (Option 1) Property Level Responsibilities - Propose to assist the Multifamily Properties who have Section 811 PRA units with their TRACS and EIV duties. Vendors would assist all of the properties that choose to participate in the program; and/or (Option 2) TDHCA Level Responsibilities - Propose to assist the Department with the TRACS duties associated with the Section 811 PRA program as outlined further.

Respondents could choose to respond to only one or both of these options, as further defined in the Request for Proposal. The Department may choose to contract with one or more vendors for these activities, but do not anticipate hiring one vendor to do both activities.

**POSTING DATE AND DEADLINE FOR SUBMISSION.** The RFP was posted on FRIDAY, SEPTEMBER 19, 2014. The deadline for submission in response to the RFP is 2:00 p.m., Central Daylight Saving Time, THURSDAY, OCTOBER 22, 2014. No submittal received after the deadline will be considered. No incomplete, unsigned, or late qualification summaries will be accepted after the deadline.

Individuals or firms interested in submitting a proposal should visit our website at: <http://www.tdhca.state.tx.us/> under the "What's New" section or visit <http://esbd.cpa.state.tx.us/> for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to the Department in writing to Julie Dumbeck at [julie.dumbeck@tdhca.state.tx.us](mailto:julie.dumbeck@tdhca.state.tx.us).

**PLACE AND METHOD OF QUALIFICATION DELIVERY.** Proposals shall be delivered to:

Texas Department of Housing and Community Affairs

Attention: Julie Dumbeck

Mailing Address:

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address for Overnight Carriers:

221 East 11th Street

Austin, Texas 78701-2410

(512) 475-3991

TRD-201404546

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**Texas Lottery Commission**

Instant Game Number 1700 "Wild 1's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1700 is "WILD 1'S". The play style is "match 3 of 6".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1700 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1700.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$1.00, \$2.00, \$3.00, \$9.00, \$10.00, \$20.00, \$30.00, \$100, \$300, \$1,000 and \$3,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Figure 1: GAME NO. 1700 – 1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
\$1.00	ONES
\$2.00	TWOS
\$3.00	THREES
\$9.00	NINES
\$10.00	TENS
\$20.00	TWENTY
\$30.00	THIRTY
\$100	ONE HUND
\$300	THR HUN
\$1,000	ONE THOU
\$3,000	THR THOU
WILD SYMBOL	TRIPLE

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 \$1.00, \$2.00, \$3.00, \$9.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$100 or \$300.

H. High-Tier Prize - A prize of \$3,000.

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 (1700), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1700-0000001-001.

K. Pack - A Pack of "WILD 1'S" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All

Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD 1'S" Instant Game No. 1700 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 "WILD 1'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching prize amounts Prize Symbols, the player wins that amount. If a player reveals 2 matching prize amounts Prize Symbols and a "WILD" Play Symbol, the player wins TRIPLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
  2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
  3. Each of the Play Symbols must be present in its entirety and be fully legible;
  4. Each of the Play Symbols must be printed in black ink except for dual image games;
  5. The Ticket shall be intact;
  6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
  7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
  8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
  9. The Ticket must not be counterfeit in whole or in part;
  10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
  11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
  12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
  13. The Ticket must be complete and not miscut and have exactly 6 (six) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
  14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
  15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
  16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the 6 (six) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. How-

ever, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

- A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.
- B. A Ticket will win as indicated by the prize structure.
- C. A Ticket can win up to one (1) time.
- D. The "WILD" Play Symbol will only appear on winning Tickets as per the prize structure.
- E. The "WILD" Play Symbol will never appear more than once on a Ticket.
- F. When the "WILD" Play Symbol appears, there will never be more than two (2) matching Prize Symbols.
- G. Winning Tickets will not contain more than three (3) matching Prize Symbols.
- H. Winning Tickets will not contain two (2) sets of three (3) matching Prize Symbols.
- I. Non-Winning Tickets will not contain more than two (2) matching Prize Symbols.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "WILD 1'S" Instant Game prize of \$1.00, \$2.00, \$3.00, \$9.00, \$10.00, \$20.00, \$30.00, \$100 or \$300, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$100 or \$300 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD 1'S" Instant Game prize of \$3,000, 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 "WILD 1'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is

not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "WILD 1'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "WILD 1'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,160,000 Tickets in the Instant Game No. 1700. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1700 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	1,066,400	10.47
\$2	917,600	12.16
\$3	347,200	32.14
\$9	124,000	90.00
\$10	49,600	225.00
\$20	12,400	900.00
\$30	2,635	4,235.29
\$100	930	12,000.00
\$300	1,984	5,625.00
\$3,000	42	265,714.29

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1700 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. 1700, 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-201404532  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 23, 2014



Instant Game Number 1701 "Blackjack"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1701 is "BLACKJACK". The play style is "beat score".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1701 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1701.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 2 DIAMOND SYMBOL, 3 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 10 DIAMOND SYMBOL, J DIAMOND SYMBOL, Q DIAMOND SYMBOL, K DIAMOND SYMBOL, A DIAMOND SYMBOL, 2 CLUB SYMBOL, 3 CLUB SYMBOL, 4 CLUB SYMBOL, 5 CLUB SYMBOL, 6 CLUB SYMBOL, 7 CLUB SYMBOL, 8 CLUB SYMBOL, 9 CLUB SYMBOL, 10 CLUB SYMBOL, J CLUB SYMBOL, Q CLUB SYMBOL, K CLUB SYMBOL, A CLUB SYMBOL, 2 HEART SYMBOL, 3 HEART SYMBOL, 4 HEART SYMBOL, 5 HEART SYMBOL, 6 HEART SYMBOL, 7 HEART SYMBOL, 8 HEART SYMBOL, 9 HEART SYMBOL, 10 HEART SYMBOL, J HEART SYMBOL, Q HEART SYMBOL, K HEART SYMBOL, A HEART SYMBOL, 2 SPADE SYMBOL, 3 SPADE SYMBOL, 4 SPADE SYMBOL, 5 SPADE SYMBOL, 6 SPADE SYMBOL, 7 SPADE SYMBOL, 8 SPADE SYMBOL, 9 SPADE SYMBOL, 10 SPADE SYMBOL, J SPADE SYMBOL, Q SPADE SYMBOL, K SPADE SYMBOL, A SPADE SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500 and \$3,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1701-1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
2 DIAMOND SYMBOL	2DMD
3 DIAMOND SYMBOL	3DMD
4 DIAMOND SYMBOL	4DMD
5 DIAMOND SYMBOL	5DMD
6 DIAMOND SYMBOL	6DMD
7 DIAMOND SYMBOL	7DMD
8 DIAMOND SYMBOL	8DMD
9 DIAMOND SYMBOL	9DMD
10 DIAMOND SYMBOL	10DMD
J DIAMOND SYMBOL	JDMD
Q DIAMOND SYMBOL	QDMD
K DIAMOND SYMBOL	KDMD
A DIAMOND SYMBOL	ADMD
2 CLUB SYMBOL	2CLB
3 CLUB SYMBOL	3CLB
4 CLUB SYMBOL	4CLB
5 CLUB SYMBOL	5CLB
6 CLUB SYMBOL	6CLB
7 CLUB SYMBOL	7CLB
8 CLUB SYMBOL	8CLB
9 CLUB SYMBOL	9CLB
10 CLUB SYMBOL	10CLB
J CLUB SYMBOL	JCLB
Q CLUB SYMBOL	QCLB
K CLUB SYMBOL	KCLB
A CLUB SYMBOL	ACLB
2 HEART SYMBOL	2HRT
3 HEART SYMBOL	3HRT
4 HEART SYMBOL	4HRT
5 HEART SYMBOL	5HRT
6 HEART SYMBOL	6HRT
7 HEART SYMBOL	7HRT
8 HEART SYMBOL	8HRT
9 HEART SYMBOL	9HRT
10 HEART SYMBOL	10HRT
J HEART SYMBOL	JHRT
Q HEART SYMBOL	QHRT
K HEART SYMBOL	KHRT
A HEART SYMBOL	AHRT
2 SPADE SYMBOL	2SPD
3 SPADE SYMBOL	3SPD
4 SPADE SYMBOL	4SPD
5 SPADE SYMBOL	5SPD
6 SPADE SYMBOL	6SPD
7 SPADE SYMBOL	7SPD
8 SPADE SYMBOL	8SPD

9 SPADE SYMBOL	9SPD
10 SPADE SYMBOL	10SPD
J SPADE SYMBOL	JSPD
Q SPADE SYMBOL	QSPD
K SPADE SYMBOL	KSPD
A SPADE SYMBOL	ASPD
\$1.00	ONES
\$2.00	TWOS
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUN
\$3,000	THR THOU

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 \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$3,000.

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 (1701), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1701-0000001-001.

K. Pack - A Pack of "BLACKJACK" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACKJACK" Instant Game No. 1701 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 "BLACKJACK" Instant Game is determined once the latex on the Ticket is scratched off to expose 14 (fourteen) Play

Symbols. The player must add the 2 cards in each HAND. If the total in any HAND is higher than the total in the DEALER'S HAND, the player wins the prize for that HAND. J, Q, K = 10. A = 11. Each HAND plays separately. 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 14 (fourteen) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 14 (fourteen) 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 14 (fourteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 14 (fourteen) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to four (4) times.

D. On all Tickets, a Prize Symbol will not appear more than one (1) time, except where required by the prize structure for a multiple win.

E. The Ace is considered high and has a value of eleven (11).

F. The Jack, Queen and King have a value of ten (10).

G. All Play Symbols on a Ticket will be different (rank and suit).

H. The range of total values from fourteen (14) to twenty (20) will be used for the DEALER'S HAND.

I. The range of total values from twelve (12) to twenty-one (21) will be used for the HANDS.

J. On Non-Winning Tickets, the total value of each HAND will never be greater than or equal to the total of the DEALER'S HAND.

K. The total value of any HAND will never equal the total value of the DEALER'S HAND.

L. No Ticket will have more than two (2) HANDS with matching totals.

M. No Ticket will have identical card ranks in the exact same order (i.e., if one (1) HAND is eight (8) + nine (9) no other HAND will be eight (8) + nine (9)).

N. Doubles (two (2) of the same card values in the same hand. i.e., 10C+10S) in a single HAND are allowed, unless restricted by other parameters, play action or prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "BLACKJACK" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLACKJACK" Instant Game prize of \$3,000, 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 "BLACKJACK" 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 "BLACKJACK" 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 "BLACKJACK" 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 11,160,000 Tickets in the Instant Game No. 1701. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1701 – 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	992,000	11.25
\$2	731,600	15.25
\$4	272,800	40.91
\$5	173,600	64.29
\$8	74,400	150.00
\$10	74,400	150.00
\$20	24,800	450.00
\$40	3,720	3,000.00
\$50	1,550	7,200.00
\$100	682	16,363.64
\$500	124	90,000.00
\$3,000	30	372,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.75. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1701 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. 1701, 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-201404534

Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: September 23, 2014

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**Texas Department of Motor Vehicles**  
Guidelines Under Occupations Code, §53.025

**GUIDELINES UNDER OCCUPATIONS CODE, §53.025**

In accordance with Occupations Code, §53.025, the Texas Department of Motor Vehicles (department) issues the following guidelines that provide reasons a particular crime is considered to relate to a license issued under Occupations Code, Chapter 2301 or under Transportation Code, Chapter 503.

<b>Offense</b>	<b>Reasons</b> <b>A person engaged in the complex and diverse business activity requiring one or more licenses issued by the department may:</b>
Penal Code, Title 4 (Inchoate Offenses), Chapter 15, Preparatory Offenses	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present.</li> </ul>
Penal Code, Title 4, (Inchoate Offenses), Chapter 16, Criminal Instruments, Interception of Wire or Oral Communication, and Installation of Tracking Device	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> </ul>

	<ul style="list-style-type: none"> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present.</li> </ul>
Penal Code, Title 5 (Offenses against the Person), Chapter 19, Criminal Homicide	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
Penal Code, Title 5 (Offenses against the Person), Chapter 20, Kidnapping, Unlawful Restraint, and Smuggling of Persons	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
Penal Code, Title 5 (Offenses against the Person), Chapter 20A, Trafficking of Persons	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>



<p>Penal Code, Title 5 (Offenses against the Person), Chapter 21, Sexual Offenses</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 5 (Offenses against the Person), Chapter 22, Assaultive Offenses</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 6 (Offenses against the Family), Chapter 25, Offenses against the Family</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 7 (Offenses against Property), Chapter 28, Arson, Criminal Mischief, and Other Property Damage or Destruction</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the</li> </ul>

	<p>conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</p> <ul style="list-style-type: none"> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 7 (Offenses against Property), Chapter 29, Robbery</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 7 (Offenses against Property), Chapter 30, Burglary and Criminal Trespass</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>

<p>Penal Code, Title 7 (Offenses against Property), Chapter 31, Theft</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 7 (Offenses against Property), Chapter 32, Fraud</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 7 (Offenses against Property), Chapter 33, Computer Crimes</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees,</li> </ul>

	<p>business owners, and with the general public;</p> <ul style="list-style-type: none"> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 7 (Offenses against Property), Chapter 33A, Telecommunications Crimes</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 7 (Offenses against Property), Chapter 34, Money Laundering</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>

<p>Penal Code, Title 7 (Offenses against Property), Chapter 35, Insurance Fraud</p>	<p>jurisdictions.</p> <ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 8 (Offenses against Public Administration), Chapter 36, Bribery and Corrupt Influence</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Penal Code, Title 8 (Offenses against Public Administration), Chapter 37, Perjury and Other Falsification</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal</li> </ul>

	jurisdictions.
Penal Code, Title 8 (Offenses against Public Administration), Chapter 38, Obstructing Governmental Operation	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
Penal Code, Title 11 (Organized Crime), Chapter 71, Organized Crime	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>

<p>Code of Criminal Procedure, Title 1 (Code of Criminal Procedure), Chapter 62, Sex Offender Registration Program involving an offense for which the person has been required to register as a sex offender</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle A (Certificates of Title and Registration of Vehicles), Chapter 501, Certificate of Title</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle A (Certificates of Title and Registration of Vehicles), Chapter 502, Registration of Vehicles</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the</li> </ul>

	<p>conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</p> <ul style="list-style-type: none"> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle A (Certificates of Title and Registration of Vehicles), Chapter 503, Dealer's and Manufacturer's Vehicle License Plates</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle A (Certificates of Title and Registration of Vehicles), Chapter 504, License Plates</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> </ul>



	<ul style="list-style-type: none"> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle A (Certificates of Title and Registration of Vehicles), Chapter 520, Miscellaneous Provisions</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses;</li> <li>• have access to consumers or unsupervised children in secluded settings with no one else present or few persons present; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle C (Rules of the Road), Chapter 547, Vehicle Equipment</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>

<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle C (Rules of the Road) Chapter 548, Compulsory Inspection of Vehicles</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle J (Miscellaneous Provisions), Chapter 727, Modification of, Tampering with, and Equipment of Motor Vehicles</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Transportation Code, Title 7 (Vehicles and Traffic), Subtitle J (Miscellaneous Provisions), Chapter 728, Subchapter B, Sale of Master Key for Motor Vehicle Ignitions</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Occupations Code, Chapter 2301, Title 14 (Regulation of Motor Vehicles and Transportation), Subtitle A (Regulations Related to Motor Vehicles), Subchapter R, Regulation of Certain Commercial Uses of Motor Vehicles</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> </ul>

	<ul style="list-style-type: none"> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Tax Code, Title 1 (Property Tax Code), Subtitle D (Appraisal and Assessment), Chapter 23, Appraisal Methods and Procedures</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Tax Code, Title 2 (State Taxation), Subtitle E (Sales, Excise, and Use Taxes), Chapter 152, Taxes on Sale, Rental, and Use of Motor Vehicles</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Business and</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the</li> </ul>

<p>Commerce Code, Title 2 (Competition and Trade Practices), Chapter 17, Deceptive Trade Practices</p>	<p>general economy of Texas, the public interest, and the welfare of Texas's citizens;</p> <ul style="list-style-type: none"> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Health and Safety Code, Title 6 (Food, Drugs, Alcohol, and Hazardous Substances), Subtitle C (Substance Abuse Regulation and Crimes), Chapter 481, Texas Controlled Substances Act</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Health and Safety Code, Title 6 (Food, Drugs, Alcohol, and Hazardous Substances), Subtitle C (Substance Abuse Regulation and Crimes), Chapter 482, Simulated Controlled Substances</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Health and Safety Code, Title 6 (Food, Drugs, Alcohol, and Hazardous Substances), Subtitle C (Substance Abuse Regulation and Crimes), Chapter 483, Dangerous Drugs</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• conduct business transactions and make representations involving in-person interaction with licensees, business owners, and with the general public, in situations that present potential for unobserved, intimidating, threatening, or confrontational behavior, possibly in secluded locations and possibly at late hours; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>Health and Safety Code, Title 6 (Food, Drugs, Alcohol, and Hazardous Substances), Subtitle D (Hazardous Substances), Chapter 365, Litter</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>

	jurisdictions.
Water Code, Title 2 (Water Administration), Subtitle A (Executive Agencies), Chapter 7, Enforcement	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• have unlimited access to numerous vehicles and motor vehicles that provide a transient forum for the conduct of illegal activity or illegal transport, sale, distribution, or delivery of goods, humans, dangerous or hazardous materials, or controlled substances;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
United States Code, Title 15 (Commerce and Trade), Chapter 28, Disclosure of Automobile Information, especially 15 USC §1233, Violations and Penalties	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
United States Code, Title 18, (Crimes and Criminal Procedure), Part 1 (Crimes), Chapter 63, Mail Fraud and Other Fraud Offenses	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• have direct access to property and handle money belonging to others, thereby acting in a fiduciary capacity;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• become privy to personal and financial information of consumers and business entities;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• originate or acquire contracts involving exchange of money in sizeable amount;</li> <li>• use computers to access a variety of secured electronic data, private financial information, and intelligence belonging to and in possession of licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>

<p>United States Code, Title 49 (Transportation), Subtitle VI (Motor Vehicle and Driver Programs), Part A (General), Chapter 301, Motor Vehicle Safety, especially 49 USC §30170, Criminal Penalties</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>
<p>United States Code, Title 49 (Transportation), Subtitle VI (Motor Vehicle and Driver Programs), Part C (Information, Standards, and Requirements), Chapter 327, Odometers, especially 49 USC §32709, Penalties and Enforcement</p>	<ul style="list-style-type: none"> <li>• impact the stability of and trust in Texas's system of vehicle sale and distribution, which could affect the general economy of Texas, the public interest, and the welfare of Texas's citizens;</li> <li>• have unique opportunity to exercise fraud, deceit, unfair practices, misrepresentation, discrimination, and imposition or other abuse of the people of this state relating to the value, attributes, construction, need for service, repair, dismantling, and destruction of vehicles and motor vehicles;</li> <li>• be in a position of trust, which requires honesty and integrity, while making representations to licensees, business owners, and the general public;</li> <li>• conduct business transactions and make representations involving telecommunication with licensees, business owners, and with the general public;</li> <li>• create, file, and maintain records, reports, contracts, and accounts, relating to, distribution, sales, or title transfer of vehicles or motor vehicles, thereby providing opportunity for falsification, witness and evidence tampering, perjury, and other similar offenses; and</li> <li>• be subject to numerous and complex law, rules, and regulations under various state and federal jurisdictions.</li> </ul>

TRD-201404442  
David D. Duncan  
General Counsel  
Texas Department of Motor Vehicles  
Filed: September 18, 2014

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## Texas Parks and Wildlife Department

### Notice of Proposed Real Estate Transactions

Acceptance of Land Donation and Creation of New Wildlife Management Area - Cochran, Terry and Yoakum counties

Approximately 14,037 Acres at the Yoakum Dunes Preserve

In a meeting on November 6, 2014 the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acceptance of tracts of land totaling approximately 10,635 acres for addition to acreage already owned by TPWD to create the Yoakum Dunes Wildlife Management Area in Cochran, Terry and Yoakum Counties. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at [ted.hollingsworth@tpwd.texas.gov](mailto:ted.hollingsworth@tpwd.texas.gov) or through the TPWD web site at [tpwd.texas.gov](http://tpwd.texas.gov).

Grant of an Easement - Harris County

Approximately 1 Acre at Sheldon Lake State Park

In a meeting on November 6, 2014 the Texas Parks and Wildlife Commission (the Commission) will consider granting an easement of approximately 1 acre for the upgrade and use of an existing pump station inside Sheldon Lake State Park in Harris County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at [ted.hollingsworth@tpwd.texas.gov](mailto:ted.hollingsworth@tpwd.texas.gov) or through the TPWD web site at [tpwd.texas.gov](http://tpwd.texas.gov).

TRD-201404541  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: September 24, 2014

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## Texas Department of Public Safety

### Notice of Contract Award

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Department of Public Safety announces this award for IT Related Major Consulting Services under Request for Proposals No. 405-ITD-13-P33017 to Deloitte Consulting LLP, 400 W. 15th Street, Suite 1700, Austin, Texas 78701.

The total maximum amount of the contract is \$498,000. The term of the contract is September 12, 2014 through August 31, 2015.

The request for proposals for major consulting services was published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7371).

TRD-201404476  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Filed: September 19, 2014

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**Public Utility Commission of Texas**

**Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on September 19, 2014, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Panhandle Telecommunication Systems, Inc. d/b/a PTCI for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 43240.

The requested amendment is to expand the service area footprint to include the municipal boundaries of the City of Booker, 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 43240.

TRD-201404535  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 23, 2014

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**Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 19, 2014 for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of Usmani Enterprises, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) and Eligible Telecommunications Provider (ETP). Docket Number 43221.

The Application: The company requests ETC/ETP designation to be eligible for federal and state universal service funds to assist it in providing universal service in Texas. Pursuant to P.U.C. Substantive Rule §26.418 and P.U.C. Substantive Rule §26.417, the commission designates qualifying common carriers as ETCs and ETPs for service areas designated by the commission. Usmani Enterprises, Inc. seeks ETC/ETP designation to serve within the AT&T Texas and Verizon wire centers and their associated exchanges and study areas in their entirety as identified in Exhibit A to the application. The company holds Service Provider Certificate of Operating Authority Number 60931. Usmani Enterprises, Inc. has requested approval of the application to be effective no earlier than 30 days after completion of notice in the *Texas Register*; in this instance; the requested effective date is November 5, 2014.

Persons who wish to comment upon the action sought should notify the Public Utility Commission of Texas no later than October 17, 2014. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43221.

TRD-201404536  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 23, 2014

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**Notice of Application to Relinquish a Service Provider Certificate of Operating Authority**

September 19, 2014, Liberty-Bell Telecom LLC d/b/a DISH Network Phone & Internet (Liberty-Bell) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60888. Liberty-Bell seeks to relinquish the certificate. Liberty-Bell stated that it has not initiated nor is offering service in the state of Texas, is evaluating future plans, and will file for a new SPCOA when a decision to enter the market is made.

The Application: Application of Liberty-Bell Telecom LLC d/b/a DISH Network Phone & Internet to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 43226.

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 October 10, 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 43226.

TRD-201404537  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 23, 2014

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**Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)**

Docket Title and Number: Application of XIT Rural Telephone Cooperative, Inc. to Withdraw Services Pursuant to SUBST. R. §26.208(h) - Docket Number 43182.

The Application: On September 18, 2014, pursuant to P.U.C. Substantive Rule §26.208(h), XIT Rural Telephone Cooperative, Inc. filed an application with the Commission to withdraw the Pay Telephone Service and Pay Telephone Access Service rates and service descriptions in its Member Services Tariff Table of Contents and in various sections. XIT Rural is also requesting to withdraw optional services for Six-Way Calling/Six-Way with two or more features as well as the Telephone Calling Card service. In addition, XIT Rural is making minor text changes to its Call Forwarding Busy/No Answer and Call Waiting/Cancel Call Waiting service offerings.

As of July 18, 2014, XIT Rural has no customers subscribing to these services. The proceedings were docketed and suspended on September 19, 2014, to allow adequate time for review and intervention.

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 Docket Number 43182.

TRD-201404485  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 19, 2014



### Notice of Petition for Amendment or Revocation to Sewer Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on September 19, 2014, of a petition under Texas Water Code §13.254 by Walton Texas, L.P. for revocation of or expedited release from Sweetwater Utility, LLC's sewer certificate of convenience and necessity in Hays County, Texas.

Docket Style and Number: Petition of Walton Texas, L.P. for Revocation of or to Amend Sweetwater Utility, LLC's Sewer Certificate of Convenience and Necessity by Expedited Release in Hays County, Docket No. 43248.

The Application: Walton Texas, L.P. (Walton) owns 1,330 acres in Hays County, Texas. Walton petitioned the Public Utility Commission of Texas under Texas Water Code §13.254(a)(1), §13.254(a-1) and/or §13.254(a-5) for revocation or expedited release of this property from Sweetwater Utility, LLC's sewer certificate of convenience and necessity, No. 20887. Parker states that (1) Sweetwater has never provided wastewater services within the CCN or certificated area, (2) has never constructed wastewater collection, treatment or disposal facilities within the CCN or certificated area, and (3) presently is neither legally qualified nor competent to do so.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than November 3, 2014, 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 comments should reference Docket Number 43248.

TRD-201404543  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 24, 2014



### Notice of Petition for an Amendment to a Sewer Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas on September 18, 2014, of a petition under Texas Water Code §13.254(a-5) by Nor-Tex HQ Farm, Ltd. to amend Green Valley Special Utility District's sewer certificate of convenience and necessity by expedited release in Guadalupe County, Texas.

Docket Style and Number: Petition of Nor-Tex HQ Farm, Ltd. to Amend Green Valley Special Utility District's Sewer Certificate of Convenience and Necessity by Expedited Release in Guadalupe County, Docket No. 43176.

The Application: Nor-Texas HQ Farm, Ltd. (Nor-Texas) owns 320.82 acres in Guadalupe County, Texas. Nor-Texas petitioned the Public Utility Commission of Texas under Texas Water Code §13.254(a-5) for expedited release of this property from Green Valley Special Utility District's (Green Valley) sewer certificate of convenience and necessity, No. 20973. Nor-Texas states that this property is not receiving service from Green Valley.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than November 3, 2014, 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 comments should reference Docket Number 43176.

TRD-201404486  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 19, 2014



## Texas Department of Transportation

### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects. For information regarding actions and times for aviation public hearings, please go to the following website:

[www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings](http://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings).

Or visit [www.txdot.gov](http://www.txdot.gov), How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PI-LOT.

TRD-201404528  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: September 23, 2014



## Sam Houston State University

### Notice of Award

Award of Consulting Contract for RFP 753-015-UA003DJF to provide consulting services to University Advancement for Capital Campaign.

Sam Houston State University is issuing an award notice for a consultant to:

1. Provide ongoing advice and counsel to the University's President, Vice President for Advancement, Associate Vice President for Development, and Campaign Manager for the preparation, implementation, and successful conduct of the capital campaign.



2. Work closely with the senior administration and advancement staff to compile a case for support, which includes objectives and an overall fund-raising target.
3. Develop a comprehensive campaign plan, including staff and volunteer organizations and scheduling.
4. Work with advancement staff to develop a strategy to inform the key faculty, staff and major donors regarding the campaign planning and its general purposes.
5. Assist with the development of a strategy to create awareness about the campaign, especially one that involves major donors and prospects.
6. Work with development staff to identify top prospects and enlist the campaign's volunteer leadership, providing job descriptions and materials for use by volunteers and staff.
7. Assist with the writing and preparation of all campaign printed material and visual communications, including video, the SHSU website and social media, and PowerPoint presentations.
8. Work with the development staff in formulating specific strategies to cultivate and solicit certain major prospects for lead gifts to the campaign.
9. Provide advice and counsel regarding qualified foundation and corporation prospects for support of campaign objectives and assist with guidance for proposal preparation.

10. Develop functional system to report the progress of the campaign, including its funding objectives and overall goal (once they are determined).

11. Assist with developing efficient procedures to acknowledge, receipt, record and track campaign pledges and a follow-up program for accurate and timely collection of pledges.

12. Assist with a program to market the University and the campaign to prospective donors and influential leaders.

Dini Spheris Inc, 2727 Allen Pkwy. Ste. 1650, Houston, Texas 77019-2125

Consulting Services \$216,000.00 plus \$12,000.00 in documented travel expenses.

Term of contract: September 15, 2014 - August 31, 2015.

TRD-201404526

Rhonda Beassie

General Counsel

Sam Houston State University

Filed: September 23, 2014





## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “39 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 39 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)

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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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