

---

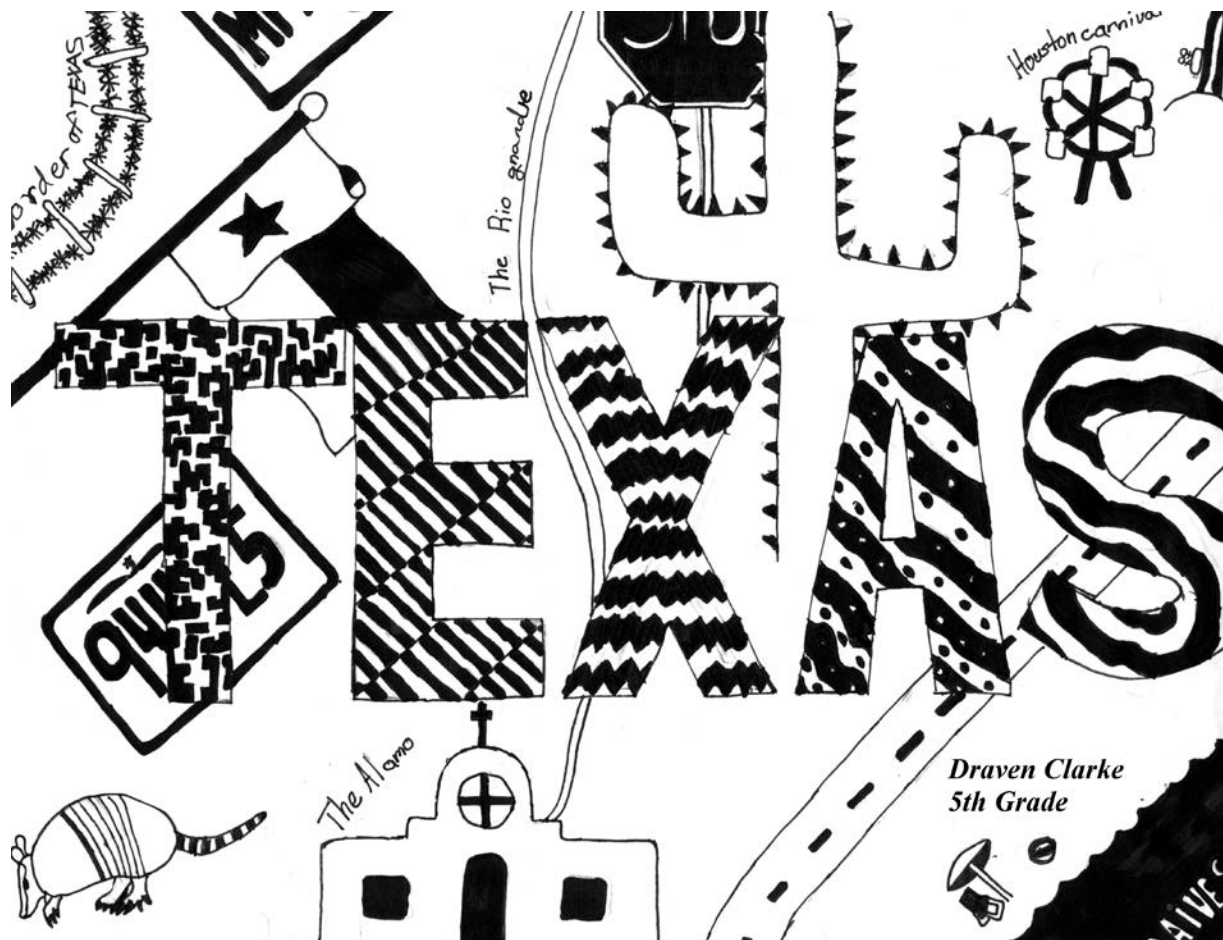
# TEXAS REGISTER

Volume 40 Number 27

July 3, 2015

Pages 4263 - 6644

---



**2016 Publication Schedule Included**

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 12-0090)**, is published weekly (52 times per year) for \$259.00 (\$382.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 701 East Water Street, Charlottesville, VA 22902.

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

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Conklin, 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 12887  
Austin, TX 78711  
(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 –**  
Carlos H. Cascos

**Director –**  
Robert Summers

**Staff**  
Leti Benavides  
Dana Blanton  
Deana Lackey  
Jill S. Ledbetter  
Michelle Miner  
Joy L. Morgan  
Rachel Rigdon  
Barbara Strickland  
Tami Washburn

# IN THIS ISSUE

## **ATTORNEY GENERAL**

Requests for Opinions.....4269

## **PROPOSED RULES**

### **TEXAS ETHICS COMMISSION**

#### REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

1 TAC §20.1 .....4271

### **TEXAS JUDICIAL COUNCIL**

#### INDIGENT DEFENSE POLICIES AND STANDARDS

1 TAC §174.26 .....4273

1 TAC §174.26 .....4273

1 TAC §174.27, §174.28 .....4274

1 TAC §174.27, §174.28 .....4274

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

#### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

1 TAC §372.1521 .....4276

#### FAMILY VIOLENCE PROGRAM

1 TAC §379.610, §379.611 .....4278

1 TAC §379.1308 .....4280

1 TAC §379.2009 .....4281

### **FINANCE COMMISSION OF TEXAS**

#### RESIDENTIAL MORTGAGE LOAN ORIGINATORS APPLYING FOR LICENSURE WITH THE OFFICE OF CONSUMER CREDIT COMMISSIONER UNDER THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

7 TAC §2.106 .....4281

### **OFFICE OF CONSUMER CREDIT COMMISSIONER**

#### CONSUMER DEBT MANAGEMENT SERVICES

7 TAC §§88.102, 88.107, 88.110 .....4284

### **CREDIT UNION DEPARTMENT**

#### CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

7 TAC §91.401 .....4287

7 TAC §91.802 .....4288

7 TAC §91.803 .....4292

7 TAC §91.805 .....4294

7 TAC §91.901 .....4295

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

### COMMUNITY AFFAIRS PROGRAMS

10 TAC §5.1009 .....4296

10 TAC §5.2002, §5.2004 .....4298

### **STATE BOARD FOR EDUCATOR CERTIFICATION**

#### REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

19 TAC §§231.49, 231.65, 231.71, 231.73, 231.75, 231.77, 231.81 .....4300

19 TAC §231.193, §231.195 .....4302

19 TAC §231.211, §231.213 .....4303

19 TAC §231.241 .....4304

19 TAC §231.395 .....4304

19 TAC §§231.573, 231.579, 231.581 .....4305

19 TAC §231.591 .....4306

### **TEXAS MEDICAL BOARD**

#### ACUPUNCTURE

22 TAC §183.25 .....4306

22 TAC §183.26 .....4307

### **TEXAS WATER DEVELOPMENT BOARD**

#### REGIONAL WATER PLANNING

31 TAC §357.10 .....4310

31 TAC §357.50, §357.51 .....4311

31 TAC §357.62 .....4313

#### STATE WATER PLANNING GUIDELINES

31 TAC §358.3 .....4313

### **COMPTROLLER OF PUBLIC ACCOUNTS**

#### PROPERTY TAX ADMINISTRATION

34 TAC §§9.1051 - 9.1054, 9.1059, 9.1060 .....4315

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

#### GENERAL PROVISIONS

37 TAC §151.25 .....4328

37 TAC §151.75 .....4329

#### PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS

37 TAC §§154.1 - 154.9, 154.11 .....4330

### **TEXAS JUVENILE JUSTICE DEPARTMENT**

#### IDENTIFYING, REPORTING AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH AND SERIOUS INCIDENTS

37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, 358.620 .....4336

37 TAC §§358.300, 358.320, 358.400, 358.420, 358.440, 358.460, 358.480, 358.500, 358.600, 358.620, 358.640, 358.660, 358.680, 358.700, 358.720, 358.740, 358.760, 358.780, 358.800, 358.820, 358.840, 358.900, 358.920 .....4341

**WITHDRAWN RULES**

**TEXAS ETHICS COMMISSION**

REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

1 TAC §20.1 .....4343

**TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS**

PROFESSIONAL COUNSELORS

22 TAC §§681.2, 681.9, 681.12, 681.14, 681.15 .....4343

22 TAC §681.31 .....4343

22 TAC §681.41, §681.48 .....4343

22 TAC §681.72 .....4343

22 TAC §§681.81 - 681.83 .....4344

22 TAC §§681.91 - 681.93 .....4344

22 TAC §681.102 .....4344

22 TAC §681.123, §681.125 .....4344

22 TAC §681.141, §681.142 .....4344

22 TAC §§681.161, 681.162, 681.166 .....4344

22 TAC §681.202 .....4345

22 TAC §681.251 .....4345

**ADOPTED RULES**

**TEXAS FACILITIES COMMISSION**

ADMINISTRATION

1 TAC §111.26 .....4347

**OFFICE OF CONSUMER CREDIT COMMISSIONER**

PROPERTY TAX LENDERS

7 TAC §89.207 .....4350

7 TAC §89.601 .....4350

7 TAC §89.802 .....4350

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

UNIFORM MULTIFAMILY RULES

10 TAC §§10.607, 10.622, 10.623 .....4351

**TEXAS MEDICAL BOARD**

LICENSURE

22 TAC §163.6 .....4353

PHYSICIAN REGISTRATION

22 TAC §166.2 .....4353

TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §180.4 .....4354

ACUPUNCTURE

22 TAC §183.4, §183.6 .....4354

PROCEDURAL RULES

22 TAC §187.13 .....4355

22 TAC §187.24 .....4355

PROCEDURAL RULES

22 TAC §187.43 .....4356

22 TAC §187.61 .....4356

22 TAC §187.70, §187.72 .....4356

22 TAC §187.73 .....4356

COMPLIANCE PROGRAM

22 TAC §189.7 .....4357

**TEXAS DEPARTMENT OF INSURANCE**

STATE FIRE MARSHAL

28 TAC §34.303 .....4357

**TEXAS WATER DEVELOPMENT BOARD**

DRINKING WATER STATE REVOLVING FUND

31 TAC §371.42 .....4361

CLEAN WATER STATE REVOLVING FUND

31 TAC §375.52 .....4364

31 TAC §375.62 .....4364

**DEPARTMENT OF AGING AND DISABILITY SERVICES**

PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

40 TAC §§17.101 - 17.104 .....4366

40 TAC §§17.201 - 17.203 .....4366

40 TAC §§17.301 - 17.303 .....4367

40 TAC §17.401 .....4367

40 TAC §§17.101 - 17.103 .....4367

40 TAC §§17.201 - 17.204 .....4371

40 TAC §17.301, §17.302 .....4371

40 TAC §17.401 .....4372

40 TAC §§17.501 - 17.503 .....4372

NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION	
40 TAC §§19.2701 - 19.2709 .....	4373

**RULE REVIEW**

**Proposed Rule Reviews**

Texas Education Agency.....	4379
State Board for Educator Certification.....	4379

**Adopted Rule Reviews**

Texas Department of Banking .....	4380
Credit Union Department.....	4380
State Board for Educator Certification.....	4380
Finance Commission of Texas .....	4380

**IN ADDITION**

**Office of the Attorney General**

Texas Health and Safety and Texas Water Code Settlement Notice	4383
Texas Water Code and Texas Health and Safety Code Settlement Notice.....	4383

**Brazos Valley Council of Governments**

Targeted Occupation List.....	4383
-------------------------------	------

**Central Texas Council of Governments**

Contract Award Announcement.....	4384
----------------------------------	------

**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings.....	4384
------------------------------	------

**Texas Commission on Environmental Quality**

Agreed Orders.....	4384
Correction of Error.....	4387
Enforcement Orders.....	4387
Notice of District Petition .....	4391
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions .....	4392
Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions .....	4392
Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit.....	4393
Proposal for Decision.....	4394

**General Land Office**

Notice and Opportunity to Comment on the Texas Coastal Management Program Section 309 Assessment and Strategies Report .....	4394
--	------

**Texas Health and Human Services Commission**

Notice of Public Hearing on Proposed Attendant Compensation Payment Rates.....	4394
Notice of Public Hearing on Proposed Medicaid Payment Rates.....	4395
Notice of Public Hearing on Proposed Medicaid Payment Rates.....	4396
Notice of Public Hearing on Proposed Payment Rates.....	4396
Notice of Public Hearing on Proposed Payment Rates.....	4397
Public Notice.....	4397
Public Notice - State Plan Amendment Number 15-019 .....	4398

**Texas Department of Housing and Community Affairs**

Public Notice.....	4399
--------------------	------

**Texas Lottery Commission**

Instant Game Number 1691 "\$1 Set for Life" .....	4400
Instant Game Number 1692 "\$2 Set for Life" .....	4404
Instant Game Number 1693 "\$5 Set for Life" .....	4409
Instant Game Number 1694 "\$10 Set for Life" .....	4414

**Texas Department of Public Safety**

Notice to Applicants for Participation in the Department's Pilot Program for Driver Record Monitoring Services.....	4419
---	------

**Public Utility Commission of Texas**

Notice of Application for Amendment to a Service Provider Certificate of Operating Authority.....	4419
Notice of Application for Amendment to a Service Provider Certificate of Operating Authority.....	4419
Notice of Application for Sale, Transfer, or Merger.....	4419
Notice of Application to Amend Water Certificate of Convenience and Necessity.....	4420
Notice of Application to Amend Water Certificate of Convenience and Necessity.....	4420

**Texas Department of Transportation**

Public Notice - Aviation.....	4420
-------------------------------	------

**Texas Veterans Commission**

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program .....	4421
---	------

**Workforce Solutions Deep East Texas**

Request for Proposals for Operations and Management of Child Care Services .....	4421
--	------

# Open Meetings

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

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

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

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

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

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

<http://texasattorneygeneral.gov/og/open-government>

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>

...

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

# THE ATTORNEY GENERAL

---

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

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

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

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

---

Requests for Opinions

**RQ-0029-KP**

**Requestor:**

The Honorable Carol Alvarado

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78701-2910

Re: Whether section 142.056 of the Local Government Code limits the frequency of elections regarding the designated bargaining representative for municipal police (RQ-0029-KP)

**Briefs requested by July 16, 2015**

*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-201502408

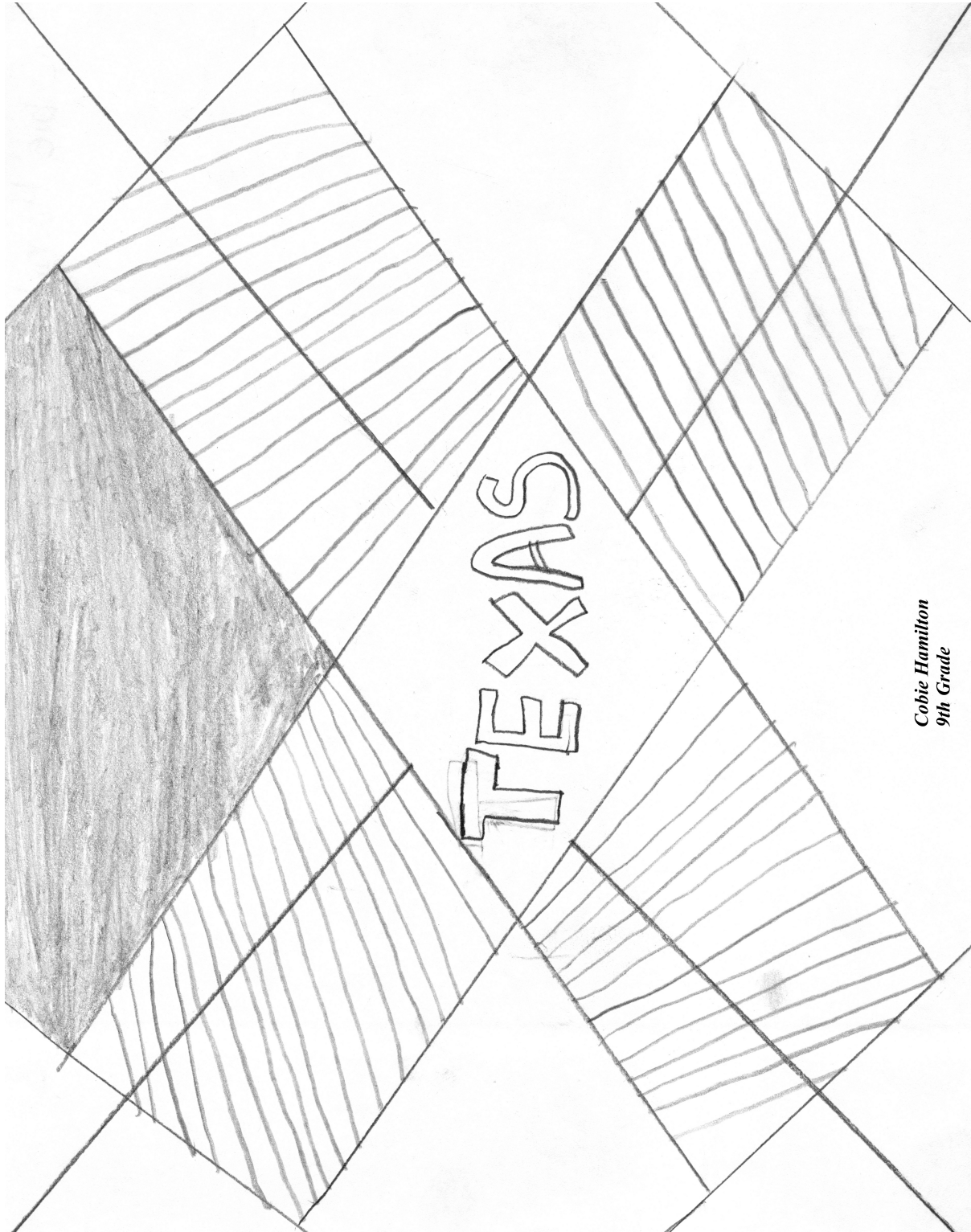
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: June 23, 2015





*Cobie Hamilton  
9th Grade*



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

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

##### SUBCHAPTER A. GENERAL RULES

###### 1 TAC §20.1

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission rule §20.1, relating to the meaning of "in connection with a campaign".

Section 20.1 relates to the Title 15 of the Election Code definitions. Title 15 defines "campaign expenditure" as follows: "An expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure." Section 251.001(7) of the Election Code. To provide clarity, the proposed amendment defines the phrase "in connection with a campaign."

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the law, by defining "campaign expenditure" for purposes of the Texas campaign finance law (Title 15).

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

The amendment to §20.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.1 affects Texas Election Code §251.001(7).

§20.1. *Definitions.*

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (20) (No change.)

(21) In connection with a campaign:

(A) An expenditure is made in connection with a campaign for an elective office if it is:

(i) made for a communication that expressly advocates the election or defeat of a clearly identified candidate by:

(I) using such words as "vote for," "elect," "support," "vote against," "defeat," "reject," "cast your ballot for," or "Smith for city council;" or

(II) using such phrases as "elect the incumbent" or "reject the challenger," or such phrases as "vote pro-life" or "vote pro-choice" accompanied by a listing of candidates described as "pro-life" or "pro-choice;"

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(I) refers to a clearly identified candidate;

(II) is distributed within 30 days before a contested election for the office sought by the candidate;

(III) targets a mass audience or group in the geographical area the candidate seeks to represent; and

(IV) includes images, sounds, or words that, without consideration of the intent of the person making the communication, are susceptible of no other reasonable interpretation than to urge the election or defeat of the candidate;

(iii) made by a candidate or political committee to support or oppose a candidate; or

(iv) a campaign contribution to:

(I) a candidate; or

(II) a group that, at the time of the contribution, already qualifies as a political committee.

(B) An expenditure is made in connection with a campaign on a measure if it is:

(i) made for a communication that expressly advocates the passage or defeat of a clearly identified measure by using

such words as "vote for," "support," "vote against," "defeat," "reject," or "cast your ballot for;"

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(I) refers to a clearly identified measure;

(II) is distributed within 30 days before the election in which the measure is to appear on the ballot;

(III) targets a mass audience or group in the geographical area in which the measure is to appear on the ballot; and

(IV) includes images, sounds, or words that, without consideration of the intent of the person making the communication, are susceptible of no other reasonable interpretation than to urge the passage or defeat of the measure;

(iii) made by a political committee to support or oppose a measure; or

(iv) a campaign contribution to a group that, at the time of the contribution, already qualifies as a political committee.

(C) Any cost incurred for covering or carrying a news story, commentary, or editorial by a broadcasting station or cable television operator, Internet website, or newspaper, magazine, or other periodical publication, including an Internet or other electronic publication, is not a campaign expenditure if the cost for the news story, commentary, or editorial is not paid for by, and the medium is not owned or controlled by, a candidate or political committee.

(D) For purposes of this section:

(i) a candidate is clearly identified by a communication that includes the candidate's name, office sought, office held, likeness, photograph, or other apparent and unambiguous reference; and

(ii) a measure is clearly identified by a communication that includes the measure's name or ballot designation (such as "Proposition 1"), purposes, election date, or other apparent and unambiguous reference.

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

Filed with the Office of the Secretary of State on June 18, 2015.

TRD-201502333

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: August 2, 2015

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



## PART 8. TEXAS JUDICIAL COUNCIL

### CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

#### SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

The Texas Indigent Defense Commission proposes the repeal and replacement of §§174.26 - 174.28, concerning policy monitoring processes and benchmarks.

Sections 174.26 - 174.28 were also reviewed pursuant to Texas Government Code, §2001.039, which requires each state agency to periodically review and consider for re-adoption each of its rules. The Commission has determined that the reasons for the rules continue to exist but that the rules will be repealed and new rules will be proposed as described in this preamble. The proposed repeals and new sections are the result of the rule review process.

In general, each section was reviewed and proposed for repeal and readopting in order to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; and to change the name of the agency from Task Force on Indigent Defense to Texas Indigent Defense Commission, which occurred on September 1, 2011 pursuant to HB 1754, 82nd Legislature, Regular Session.

#### SECTION-BY-SECTION SUMMARY

The following section-by-section summary describes only substantive changes.

New §174.26 reflects a position title change of the Texas Indigent Defense Commission and the change to the grant officials listed in the Commission's grant administration rule §173.301.

New §174.27 reflects the Commission's elimination of equalization grants and its use of discretionary grants. Subsection (a)(8) and (9) add two additional factors for the Commission's risk assessment and delete one related to a self-assessment that may be conducted by a county. Subsection (b) is also added to clarify that the Commission may conduct limited scope reviews as a result of factors outside of the risk assessment.

New §174.28 includes the deletion of text that reflects that the review of local indigent defense plans is now conducted on each plan submitted every two years and is no longer specifically part of the on-site monitoring process. The procedure for examining timely appointments of counsel in criminal matters is described in greater detail. The time frames for examining timely appointments of counsel in juvenile matters has been adjusted to meet changes in statute. Time frames for issuing reports have also been adjusted.

#### FISCAL NOTE

Ms. Glenna Rhea Bowman, Chief Financial Officer of the Office of Court Administration, has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the sections will have no fiscal impact on local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bowman has determined that there will be no material economic costs to persons who are required to comply with the proposed rules, nor do the new rules have any anticipated adverse effect on small or micro-businesses.

#### PUBLIC BENEFIT

Mr. Jim Bethke, Executive Director of the Commission, has also determined that for each of the first five years the proposed rules are in effect the public benefit will be an improvement in the quality of indigent defense services because of corrective actions taken by local jurisdictions to more fully meet the requirements of state law related to the provision of indigent defense services.

## REGULATORY ANALYSIS

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

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Comments on the proposed and existing rules may be submitted in writing to Wesley Shackelford, Deputy Director/Special Counsel, Texas Indigent Defense Commission, 209 W. 14th St. Suite 202, Austin, Texas 78701 or by email to wshackelford@tidc.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*. Any proposed changes to the rules as a result of comments during the rule review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

## LEGAL CERTIFICATION

The Texas Indigent Defense Commission's Deputy Director/Special Counsel, Wesley Shackelford, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

## DIVISION 1. DEFINITIONS

### 1 TAC §174.26

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

### STATUTORY AUTHORITY

The proposed repeal is authorized by Texas Government Code, §79.037, which directs the Commission to distribute funds based on a county's policy compliance with standards developed by the Commission and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Commission to monitor grants and enforce compliance with conditions of the grants. The repeal is also proposed under §79.035(a), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The repeal is also proposed under §79.021, which directs the Commission to adopt rules as necessary to implement this chapter.

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

### §174.26 Subchapter 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 June 15, 2015.

TRD-201502274

Wesley Shackelford

Deputy Director/Special Counsel

Texas Judicial Council

Earliest possible date of adoption: August 2, 2015

For further information, please call: (512) 936-6994



### 1 TAC §174.26

### STATUTORY AUTHORITY

The proposed rule is authorized by Texas Government Code, §79.037, which directs the Commission to distribute funds based on a county's policy compliance with standards developed by the Commission and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Commission to monitor grants and enforce compliance with conditions of the grants. The rule is also proposed under §79.035(a), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The rule is also proposed under §79.021, which directs the Commission to adopt rules as necessary to implement this chapter.

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

### §174.26. Subchapter Definitions.

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

- (1) Executive Director--The executive director of the Commission.
- (2) Authorized Official--The county judge or other designee authorized to apply for, accept, decline, modify, or cancel a grant designated under §173.301 of this title.
- (3) Period of review--The 12 months preceding the date of the monitoring visit.
- (4) Policies and Standards Committee--A committee of the Commission charged with developing policies and standards related to improving indigent defense services.
- (5) Policy Monitor--The employee of the Commission who monitors the effectiveness of a county's indigent defense policies, standards, and procedures.
- (6) Risk Assessment--A tool to rank each county's potential risk of not being in compliance with indigent defense laws.
- (7) Commission--Commission means the Texas Indigent Defense Commission.

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

Filed with the Office of the Secretary of State on June 15, 2015.

TRD-201502276  
Wesley Shackelford  
Deputy Director/Special Counsel  
Texas Judicial Council  
Earliest possible date of adoption: August 2, 2015  
For further information, please call: (512) 936-6994



## DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

### 1 TAC §174.27, §174.28

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

#### STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code, §79.037, which directs the Commission to distribute funds based on a county's policy compliance with standards developed by the Commission and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Commission to monitor grants and enforce compliance with conditions of the grants. The repeals are also proposed under §79.035(a), which requires the Commission to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The repeals are also proposed under §79.021, which directs the Commission to adopt rules as necessary to implement this chapter.

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

§174.27. Risk Assessment.

§174.28. On-Site Monitoring Process.

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

Filed with the Office of the Secretary of State on June 15, 2015.

TRD-201502275  
Wesley Shackelford  
Deputy Director/Special Counsel  
Texas Judicial Council  
Earliest possible date of adoption: August 2, 2015  
For further information, please call: (512) 936-6994



### 1 TAC §174.27, §174.28

#### STATUTORY AUTHORITY

The proposed rules are authorized by Texas Government Code, §79.037, which directs the Commission to distribute funds based on a county's policy compliance with standards developed by the Commission and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Commission to monitor grants and enforce compliance with conditions of the grants. The rules are also proposed under §79.035(a), which requires the Commission to

monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The rules are also proposed under §79.021, which directs the Commission to adopt rules as necessary to implement this chapter.

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

§174.27. Risk Assessment.

(a) A risk assessment of each county shall be conducted by the policy monitor each fiscal year as the primary means of determining which counties will be selected for on-site policy monitoring. On-site monitoring visits to counties shall then be apportioned by administrative judicial region, county size, risk assessment scores, past visits and other documented factors. The risk assessment shall use a variety of factors related to the provision of indigent defense services, including but not limited to the following:

(1) Whether a county reported investigation and expert witness expenses;

(2) Whether a county reported reimbursements for attorney fees;

(3) Amount of per capita indigent defense expenses;

(4) Felony, misdemeanor, and juvenile attorney appointment rates;

(5) Population of a county;

(6) Whether complaints about a county have been received by the Commission;

(7) Whether a county received a multi-year discretionary grant;

(8) Whether the justices of the peace or municipal judges reported requests for counsel in their Texas Judicial Council Monthly Court Activity Reports;

(9) the ratio of misdemeanor requests for counsel from Article 15.17 hearings as reported in Texas Judicial Council Monthly Activity Reports to the number of misdemeanor cases paid reported by the county; and

(10) Whether a county reported appeals cases.

(b) Counties may receive monitoring visits as a result of factors outside of the risk assessment. An elected state or local official may request a monitoring visit. If Commission staff make a drop-in visit, fiscal monitoring review, or grant program review, and determines that violations of the Fair Defense Act may be present in a county, the monitor may conduct a limited-scope review of the county's procedures.

§174.28. On-Site Monitoring Process.

(a) Purpose. The process promotes local compliance with the requirements of the Fair Defense Act and Commission rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Commission. The policy monitor also attempts to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules. Policy monitoring may also include a review of statutorily required reports

to the Office of Court Administration and Commission. This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement. For each of these elements, the policy monitor shall review the local indigent defense plans and determine if the plans are in compliance with each element.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall check for documentation indicating that the magistrate or county has:

(i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;

(ii) Maintained a process to magistrate arrestees within 48 hours of arrest;

(iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and

(iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the person requested counsel, and time for transferring requests for counsel to the appointing authority.

(B) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor checks to see if procedures are in place that comply with the indigent defense plan and the Fair Defense Act.

(3) Minimum Attorney Qualifications. The policy monitor shall check that attorney appointment lists are maintained according to the requirements set in the indigent defense plans.

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall check for documentation of timely appointment of counsel in criminal and juvenile cases.

(i) Criminal Cases. The policy monitor shall determine if counsel was appointed or denied for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties. If the policy monitor cannot determine the date the appointing authority received a request for counsel, then the timeliness of appointment will be based upon the date the request for counsel was made plus 24 hours for the transmittal of the request to the appointing authority plus the time allowed to make the appointment of counsel.

(ii) Juvenile Cases. The policy monitor shall determine if counsel was appointed prior to the initial detention hearing for eligible in-custody juveniles. If counsel was not appointed, the policy monitor shall determine if the court made a finding that appointment of counsel was not feasible due to exigent circumstances. If exigent circumstances were found by the court and the court made a determination to detain the child, then the policy monitor shall determine if counsel was appointed for eligible juveniles immediately upon making this determination. For out-of-custody juveniles, the policy monitor shall determine if counsel was appointed within five working days of service of the petition on the juvenile.

(B) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each

level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process. The policy monitor shall check for documentation indicating:

(A) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;

(B) In the case of a managed assigned counsel program, that counsel is appointed according to the entity's plan of operation;

(C) That attorney selection process actually used matches what is stated in the indigent defense plans; and

(D) For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. If the county can track attorney list changes, the monitor will only examine the distribution of cases for attorneys that were on the appointment list for the entire year. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list.

(6) Payment Process. The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. The policy monitor shall issue a report to the authorized official within 60 days of the on-site monitoring visit to a county, unless a documented exception is provided by the director, with an alternative deadline provided, not later than 120 days from the on-site monitoring visit. The report shall contain recommendations to address areas of noncompliance.

(2) County Response. Within 60 days of the date the report is issued by the policy monitor, the authorized official shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Reviews. The policy monitor shall conduct follow-up reviews of counties where the report included noncompliance findings. The follow-up review shall occur within a reasonable time but not more than two years following receipt of a county's response to the report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and to the Commission any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the authorized official shall respond in writing to each recommendation, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the authorized official, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juve-

nile board notifying them that all further payments will be withheld if no response to the report is received by the Commission within 10 days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Commission or the Policies and Standards Committee approves the release of the funds.

(5) Noncompliance. If a county fails to correct any non-compliance findings, the Commission may impose a remedy under §173.307 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 June 15, 2015.

TRD-201502277

Wesley Shackelford

Deputy Director/Special Counsel

Texas Judicial Council

Earliest possible date of adoption: August 2, 2015

For further information, please call: (512) 936-6994



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

#### SUBCHAPTER F. BENEFITS

#### DIVISION 1. BENEFITS IN GENERAL

##### 1 TAC §372.1521

The Texas Health and Human Services Commission (HHSC) proposes to amend §372.1521, concerning electronic benefit transfer (EBT) account balance and transaction errors in the Temporary Assistance to Needy Families and Supplemental Nutrition Assistance programs, to align rules with federal requirements in 7 CFR §274.2(g)(2).

##### BACKGROUND AND JUSTIFICATION

HHSC proposes the amendment to add timeframe requirements for households to report and dispute an electronic benefit transfer; for the agency to investigate the dispute and deposit an adjustment, if applicable; and to clarify that adjustments must be as a result of a system error.

Under 7 CFR §274.2(g)(2), a state agency must act on all client household adjustment requests within 90 calendar days of the system error. The rule also requires the state agency to investigate the request for adjustment, determine its validity, and restore benefits, if applicable, within ten business days (or 15 calendar days if a debit adjustment, as approved by federal waiver) from the date the state agency received the household's notification. Further, the United States Department of Agriculture Food and Nutrition Service clarified that a State does not need to act on an adjustment request based on anything other than a system error.

Current policy in 1 TAC §372.1521, which was adopted before the federal regulation took effect, instructs a household to contact the EBT toll-free number to report an EBT account balance

or EBT program transaction error but does not inform the household of the timeframe for disputing the error and does not include the timeframe for the agency to act on the request.

To clarify the rule consistently with federal requirements and guidance and to alert households and stakeholders of the timeframes, HHSC seeks to amend this rule to add the federal requirements. Accordingly, the proposed amendments incorporate language to reflect that households have 90 calendar days from the date of a system error to request an adjustment.

##### SECTION-BY-SECTION SUMMARY

Proposed new §372.1521(a) defines the term "system error."

Proposed new §372.1521(b) states that a household has 90 calendar days from the date of a system error transaction to request an adjustment.

Current subsection (a) is renumbered as subsection (c) and describes the method a household must use in requesting an adjustment.

Proposed new §372.1521(d) provides that the EBT contractor has ten business days from the date the household notifies it of a request for a credit adjustment or 15 calendar days for a debit adjustment to investigate the dispute, validate the dispute, and adjust the household's account, if applicable.

Current §372.1521(b) is renumbered as subsection (e). It describes the method by which a household may seek a review of the EBT contractor's determination by HHSC's Lone Star Business Services (LSBS). Whether or not the household seeks the review of the LSBS, subsection (e) makes clear that the household retains its right to a fair hearing.

Current subsection (c) is renumbered as subsection (f) and amended to make clear that a household that disagrees with the EBT contractor or LSBS determination may request a fair hearing under HHSC's fair hearing rules within 90 days of the date of the notice from the EBT contractor.

##### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

##### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has also determined that there will be no adverse effect on small businesses or micro-businesses to comply with the proposed amendment, as they will not be required to alter their business practices as a result of the amended rule.

##### PUBLIC BENEFIT

Stephanie Muth, Deputy Executive Commissioner of the Office of Social Services, has determined that, for each year of the first five years the amendment is in effect, the anticipated public benefit expected as a result of enforcing the amendment is that households will have clear guidelines that provide the timeframe for disputing a system error on their EBT account balance and for requesting restoration of benefits. HHSC will have guidelines that provide the timeframe the agency has to investigate and re-

store benefits as appropriate and the State will be in compliance with federal requirements.

#### REGULATORY ANALYSIS

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

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Kay Jones, Health and Human Services Commission, Lone Star Business Services, Office of Eligibility Support Services, THHS 2 Building - MC-(2033), 909 West 45th Street, Austin, Texas 78751 or by e-mail to [kay.jones@hhsc.state.tx.us](mailto:kay.jones@hhsc.state.tx.us) within 30 days after publication of this proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing is scheduled for August 6, 2015 from 1:30 p.m. to 2:30 p.m. central time at the Health and Human Services Commission MHMR Center, 909 West 45th Street, Building II, Room 164, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kay Jones at (512) 206-5412.

#### LEGAL AUTHORITY

The amendment is proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority, and Texas Human Resources Code §33.002(c), which authorizes the establishment of policies and rules to ensure the efficient distribution of benefits to those eligible to receive them.

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

§372.1521. *Account Balance and Transaction Errors.*

(a) For purposes of this section, the term "system error" means an error resulting from a malfunction at any point in the redemption process: from the system host computer, to the switch, to the third-party processors, to a store's host computer or point-of-sale terminal. It includes both Electronic Benefit Transfer (EBT) account balance errors and EBT program transaction errors. The error may occur after the availability date and may result in either a debit or credit to the household.

(b) A TANF or SNAP household has 90 calendar days from the date of a system error transaction to request an adjustment.

(c) [(a)] To request an adjustment, the household must [TANF and SNAP households] contact the [Electronic Benefit Transfer (] EBT[)] call center's toll-free number to report an EBT account balance error or an EBT program transaction error for resolution by the [retailer management] EBT contractor as described in this chapter.

(d) The EBT contractor must notify the TANF or SNAP household in writing of its determination of the EBT account balance or EBT program transaction error.

(1) If the determination is that the household was overpaid, the EBT contractor will make the appropriate adjustment within 15 calendar days.

(2) If the determination is that the household is owed funds, the EBT contractor will make the adjustment within 10 business days of the date of notification.

(e) [(b)] If the household disagrees with the [After receiving written notice of the retailer management EBT contractor's] decision, the household [ehent] may contact the Texas Health and Human Services Commission (HHSC) Lone Star Business Services (LSBS) for a second review. The household retains the right to a fair hearing if requested within 90 days from the date of the notice from the EBT contractor.

(f) [(e)] If a TANF or SNAP household disagrees [is dissatisfied] with the HHSC LSBS determination [Lone Star Business Services' decision], the household has 90 days from the date of the EBT contractor's determination to [may] request a fair hearing as provided in HHSC's fair hearing rules in Chapter 357 of this title (relating to Hearings).

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502364

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 2, 2015

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



## CHAPTER 379. FAMILY VIOLENCE PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes amendments to §379.610, concerning 24-Hour-a-Day Shelter Services to Family Violence Victims less than 18 Years Old; §379.611, concerning Nonresidential Services for a Family Violence Victim who is Less than 18 Years Old; §379.1308, concerning Nonresidential Services for a Family Violence Victim Who is Less than 18 Years Old; and §379.2009, concerning Services for a Family Violence Victim Who is Less than 18 Years Old.

### Background and Justification

The Family Violence Program promotes self-sufficiency, safety, and long-term independence from family violence for adult victims and their children. The program provides emergency shelter and support services, educates the public, and provides training and prevention support to various agencies. HHSC contracts with three types of local family violence centers and organizations to carry out its Family Violence Program: shelter centers, special residential projects, and nonresidential centers.

Under Texas Family Code §32.201 and §32.202, an "emergency shelter facility" may provide emergency shelter or care to a minor and the minor's child or children, if any. Under S.B. 353,

83rd Legislature, Regular Session, 2013, the Legislature clarified that a shelter center participating in the Family Violence Program could provide emergency shelter or care to a minor, even if the shelter center does not have a license to operate a child-care facility. In response, the Executive Commissioner of HHSC amended 40 TAC §745.129, effective March 1, 2014.

The proposed amendments to §§379.610, 379.611, 379.1308, and 379.2009 clarify the circumstances under which shelter centers, special non-residential projects, and nonresidential centers may provide services to persons under the age of 18, including unaccompanied minors. HHSC proposes these amendments to provide clear guidance to family violence service providers.

#### Section-by-Section Summary

The proposed amendment to §379.610 clarifies when a shelter center may provide emergency shelter or care to an unaccompanied minor under Texas Family Code §32.201 and §32.202. The amended rule dictates how long services may be provided to these clients and when the shelter center may provide services beyond the initial 15 days. The proposed amendment also addresses shelter services provided to a victim of family violence who is under the age of 18 and is either married or legally emancipated.

The proposed amendment to §379.611 amends when a shelter center may provide nonresidential services to a person under 18 years of age, including certain circumstances under Texas Family Code §§32.201, 32.202, and 32.004. The proposed amendment requires the shelter center's compliance with Texas Family Code, Chapter 32, if consent was not obtained from the minor's parent, managing conservator, or guardian. The proposed amendment also addresses the provision of a nonresidential service to a person under 18 years of age who is either married, has been married, or has been legally emancipated.

The proposed amendment to §379.1308 clarifies when a contractor may provide a nonresidential service to a person under 18 years of age, including certain circumstances under Texas Family Code §32.004. The proposed amendment requires the contractor's compliance with Texas Family Code, Chapter 32, if consent was not obtained from the minor's parent, managing conservator, or guardian. The proposed amendment also addresses the provision of a nonresidential service to a person under 18 years of age who is either married, has been married, or has been legally emancipated.

The proposed amendment to §379.2009 clarifies when a non-residential center may provide a nonresidential service to a person under 18 years of age, including circumstances under Texas Family Code §32.004. The proposed amendment requires a nonresidential center's compliance with Texas Family Code, Chapter 32, if consent was not obtained from the minor's parent, managing conservator, or guardian. The proposed amendment also addresses the provision of a nonresidential service to a person under 18 years of age who is married, has been married, or has been legally emancipated.

The titles of §§379.610, 379.611, 379.1308, and 379.2009 are amended to reflect the subject matter of each amended rule.

#### Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed amendments are in effect, there are no anticipated implications relating to costs or revenues of state or local governments.

Ms. Rymal does not anticipate that there will be an economic cost to persons who are required to comply with the proposed rules for each year of the first five years the rules are in effect. There is no anticipated effect on employment in a local economy.

#### Small Business and Micro-business Impact Analysis

HHSC has determined that there will be no adverse effect on small businesses or micro-businesses to comply with the proposal, because the providers to whom the proposed rules apply do not meet the definition of a small business or a micro-business. By law, a Family Violence Program service provider must be a public or private nonprofit organization.

#### Public Benefit

Stephanie Muth, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the amendments are in effect, the anticipated public benefit expected as a result of enforcing the amendments is that the updated Family Violence Program rules will better clarify program standards for providing services to unaccompanied minors.

#### Regulatory Analysis

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

#### Takings Impact Assessment

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

#### Public Comment

Written comments on the proposal may be submitted to Laurie Shannon, Health and Human Services Commission, Family Violence Program, MC-2010, 909 West 45th Street, Austin, Texas 78751 or by e-mail to [laurie.shannon@hhsc.state.tx.us](mailto:laurie.shannon@hhsc.state.tx.us) within 30 days after publication of this proposal in the *Texas Register*.

## SUBCHAPTER B. SHELTER CENTERS DIVISION 6. PROGRAM ADMINISTRATION

### 1 TAC §379.610, §379.611

#### Statutory Authority

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §51.010, which allows the Executive Commissioner to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments implement Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.



§379.610. Emergency [24-Hour-a-Day] Shelter or Care for an Unaccompanied Minor [Services to Family Violence Victims less than 18 Years Old].

(a) For purposes of this division,

(1) "Emergency shelter or care" means shelter or care provided by a shelter center under Texas Family Code §32.201 and §32.202.

(2) "Minor" means a person under 18 years of age who:

(A) is not and has not been married; or

(B) has not had the disabilities of minority removed for general purposes.

(3) "Unaccompanied minor" means a minor who is not accompanied at the shelter center by the minor's parent, managing conservator, or guardian.

(b) A shelter center may provide emergency shelter or care to an unaccompanied minor and the minor's child or children, if any, only during an emergency constituting an immediate danger to the physical health and safety of the minor or the minor's child(ren).

(c) Except as provided in subsection (d) of this section, a shelter center may not provide emergency shelter or care to an unaccompanied minor or the minor's child(ren) after the 15th day following the date on which the center began to provide the shelter or care.

(d) With or without the consent of the minor's parent, managing conservator, or guardian, the shelter center may continue to offer emergency shelter or care to an unaccompanied minor and the minor's child(ren), if any, after the 15th day if the minor:

(1) is unmarried and is pregnant or is the parent of a child;

(2) has qualified for financial assistance under Texas Human Resources Code, Chapter 31, and is on the waiting list for housing assistance; or

(3) is 16 years of age or older; and

(A) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(B) manages the minor's own financial affairs, regardless of the source of income.

(e) The shelter center may rely on the minor's written statement containing the grounds on which the minor has the capacity to consent to emergency shelter or care.

(f) A victim of family violence under 18 years of age may consent to 24-hour-a-day shelter services provided by a shelter center, at any time and for any duration, if:

(1) the victim is married or has been married; or

(2) the victim has had the disabilities of minority removed for general purposes (i.e., is legally emancipated).

[(a) The center can only provide 24-hour-a-day shelter to a victim of family violence less than 18 years old if:]

[(1) the minor victim is:]

[(A) accompanied by a parent or legal guardian;]

[(B) legally emancipated;]

[(C) married or has been married;]

[(D) experiencing an emergency that constitutes an immediate danger to the physical health or safety of the minor or the minor's child or children; or]

[(2) the center is licensed to provide residential childcare.]

[(b) If the minor victim is not accompanied by a parent or legal guardian, is not legally emancipated, is not married, or has not been married, then:]

[(1) The Texas Family Code states that emergency shelter must not be provided after the 15th day since shelter has begun, unless:]

[(A) the center receives consent from the minor victim to continue shelter or care, if the minor victim:]

[(i) is 16 years old or older;]

[(ii) resides separately and apart from the minor victim's parent, managing conservator, or guardian, regardless of the duration of the residence; and]

[(iii) manages her or his own financial affairs, regardless of the source of income; or]

[(B) is unmarried and pregnant or the parent of a child; or]

[(C) the minor victim has qualified for financial assistance under the Human Resources Code, Chapter 31 and is on the waiting list for housing assistance.]

[(2) The center may rely on the minor victim's written statement containing the grounds on which the minor victim has the capacity to consent to emergency care.]

§379.611. Nonresidential Services for a Person Under [Family Violence Victim who is Less than] 18 Years of Age [Old].

(a) A shelter center may provide a nonresidential service to a minor if:

(1) the center provides emergency shelter or care to the minor under §379.610 of this subchapter (relating to Emergency Shelter or Care for an Unaccompanied Minor);

(2) the minor consents to counseling from a licensed or certified physician, psychologist, counselor, or social worker, under Texas Family Code §32.004, for:

(A) suicide prevention;

(B) chemical addiction or dependency; or

(C) sexual, physical, or emotional abuse;

(3) the center has consent from the minor's parent, managing conservator, or guardian to provide the minor with the nonresidential service; or

(4) the center otherwise complies with Texas Family Code, Chapter 32, if the center does not obtain consent from the minor's parent, managing conservator, or guardian.

(b) Notwithstanding subsection (a) of this section, a victim of family violence under 18 years of age may consent to a nonresidential service provided by a shelter center if:

(1) the victim is married or has been married; or

(2) the victim has had the disabilities of minority removed for general purposes (i.e., is legally emancipated).

[(a) Criteria: The center can provide nonresidential services to a victim of family violence less than 18 years old if:]

[(1) The minor victim is:]

- ~~[(A) accompanied by a parent or legal guardian;]~~
- ~~[(B) is legally emancipated;]~~
- ~~[(C) is married or has been married; or]~~
- ~~[(D) is experiencing an emergency situation that constitutes an immediate danger to the physical health or safety of the minor or the minor's child or children; or]~~

~~[(2) The center has:]~~

~~[(A) parental or legal guardian consent to provide the minor with nonresidential services; or]~~

~~[(B) the center complies with the Texas Family Code, §32.004, if parental or legal guardian consent is not obtained.]~~

~~[(b) Emergency Services. The contractor may provide emergency nonresidential services for only fifteen days if the minor victim does not meet the criteria under subsection (a)(1)(A) - (C) of this section, unless:]~~

~~[(1) the center receives consent, as provided in subsection (e) of this section, from the minor victim to continue services; or]~~

~~[(2) the minor victim has qualified for financial assistance under the Human Resources Code, Chapter 31 and is on the waiting list for housing assistance.]~~

~~[(c) Consent. The minor victim may consent to emergency nonresidential services, after the 15th day,]~~

~~[(1) if the minor victim:]~~

~~[(A) is 16 years old or older; and]~~

~~[(i) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and]~~

~~[(ii) manages the minor's own financial affairs, regardless of the source of income; or]~~

~~[(B) the minor victim is unmarried and pregnant or the parent of a child; and]~~

~~[(2) The center may rely on the minor victim's written statement containing the grounds on which the minor victim has the capacity to consent to emergency services.]~~

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502379

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 2, 2015

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



SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS  
DIVISION 6. PROGRAM ADMINISTRATION

**1 TAC §379.1308**

Statutory Authority

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §51.010, which allows the Executive Commissioner to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments implement Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

*§379.1308. Nonresidential Services for a Person Under [Family Violence Victim Who is Less than] 18 Years of Age [Old].*

(a) A [The] contractor may [ean] provide a nonresidential service [services] to a minor [victim of family violence less than 18 years old] if:

(1) the minor consents to counseling from a licensed or certified physician, psychologist, counselor, or social worker, under Texas Family Code §32.004, for:

- (A) suicide prevention;
- (B) chemical addiction or dependency; or
- (C) sexual, physical, or emotional abuse;

(2) the contractor has consent from the minor's parent, managing conservator, or guardian to provide the minor with the nonresidential service; or

(3) the contractor otherwise complies with Texas Family Code, Chapter 32, if the project does not obtain consent from the minor's parent, managing conservator, or guardian.

(b) Notwithstanding subsection (a) of this section, a victim of family violence under 18 years of age may consent to a nonresidential service provided by the contractor if:

- (1) the victim is married or has been married; or
- (2) the victim has had the disabilities of minority removed for general purposes (i.e., is legally emancipated).

[(1) the minor victim is:]

- [(A) accompanied by a parent or legal guardian;]
- [(B) is legally emancipated; or]
- [(C) is married or has been married; or]

[(2) the contractor:]

[(A) has parental or legal guardian consent to provide the minor with services; or]

[(B) complies with the Texas Family Code, §32.004, if parental or legal guardian consent is not obtained.]

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502381

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: August 2, 2015  
For further information, please call: (512) 424-6900



SUBCHAPTER D. NONRESIDENTIAL  
CENTERS  
DIVISION 6. PROGRAM ADMINISTRATION  
1 TAC §379.2009  
Statutory Authority

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code §51.010, which allows the Executive Commissioner to adopt rules to implement a program to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

The amendments implement Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 51. No other statutes, articles, or codes are affected by this proposal.

*§379.2009. Nonresidential Services for a Person Under [Family Violence Victim Who is Less than] 18 Years of Age [Old].*

(a) A nonresidential [The] center may [ean] provide a nonresidential service [services] to a minor [victim of family violence less than 18 years old] if:

(1) the minor consents to counseling from a licensed or certified physician, psychologist, counselor, or social worker, under Texas Family Code §32.004, for:

- (A) suicide prevention;
- (B) chemical addiction or dependency; or
- (C) sexual, physical, or emotional abuse;

(2) the center has consent from the minor's parent, managing conservator, or guardian to provide the minor with nonresidential services; or

(3) the center otherwise complies with Texas Family Code, Chapter 32, if the center does not obtain consent from the minor's parent, managing conservator, or guardian.

(b) Notwithstanding subsection (a) of this section, a victim of family violence under 18 years of age may consent to a nonresidential service provided by a nonresidential center if:

(1) the victim is married or has been married; or  
(2) the victim has had the disabilities of minority removed for general purposes (i.e., is legally emancipated).

[(1) the minor victim is:]

- [(A) accompanied by a parent or a legal guardian;]
- [(B) legally emancipated; or]
- [(C) married or has been married; or]

[(2) the center:]

[(A) has parental or legal guardian consent to provide the minor victim with services; or]

[(B) complies with the Texas Family Code, §32.004, if parental or legal guardian consent is not obtained.]

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502382

Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: August 2, 2015  
For further information, please call: (512) 424-6900



TITLE 7. BANKING AND SECURITIES  
PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE  
LOAN ORIGINATORS APPLYING FOR  
LICENSURE WITH THE OFFICE OF  
CONSUMER CREDIT COMMISSIONER UNDER  
THE SECURE AND FAIR ENFORCEMENT FOR  
MORTGAGE LICENSING ACT  
SUBCHAPTER A. APPLICATION  
PROCEDURES FOR OFFICE OF CONSUMER  
CREDIT COMMISSIONER APPLICANTS

7 TAC §2.106

The Finance Commission of Texas (commission) proposes new 7 TAC §2.106, concerning Denial, Suspension, or Revocation Based on Criminal History, for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC).

In general, the purpose of the proposed new rule is to implement Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for residential mortgage loan originator applicants and licensees under the OCCC's regulatory jurisdiction. The proposed rule also implements Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the OCCC. In addition, the proposed rule implements Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking a residential mortgage loan originator license.

Residential mortgage loan originators (RMLOs) are licensed in Texas under Chapter 180 of the Texas Finance Code. Section 180.054 currently authorizes the OCCC to collect criminal history record information regarding RMLOs using the Nationwide Mortgage Licensing System and Registry (NMLS) as a channeling agent. To provide consistency, SB 1075 amends Texas Government Code, §411.095 by adding Chapter 180 of the Finance Code to the list of chapters under which the OCCC may obtain

criminal history record information from the Department of Public Safety (DPS) relating to an individual applying for or holding a license with the OCCC under Chapter 180.

Proposed new §2.106 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of an RMLO license.

Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose.

Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of an RMLO under the OCCC's jurisdiction. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being an RMLO, including the reasons the crimes relate to the licensed occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023.

Subsection (d) identifies crimes related to financial responsibility, character, or general fitness that may be used as the basis for a denial, suspension, or revocation action by the OCCC.

Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

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

Commissioner Pettijohn has also determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of the proposal will be that the commission's rules will implement recent legislation and will provide better consistency across all licensees regulated by the OCCC. Additional public benefits are that the commission's rules will be more easily understood by licensees required to comply with the rules and the rules will be more easily enforced.

Any costs required are imposed by the Texas Legislature through the enactment of SB 1075, as well as the existing requirements in the Texas Occupations Code, and are not a result of the proposed new rule. For example, in order for the OCCC to properly review criminal history, RMLO applicants are required to pay fingerprinting fees to third parties. Some applicants and licensees may be required to obtain court documents or other evidence of criminal disposition, possibly incurring other fees. These costs are imposed by the statutory provisions and not by the proposed

rule. Thus, aside from the costs required by amended and existing statutes, the OCCC does not anticipate any additional costs to persons who are required to comply with the new rule.

There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the new rule as proposed, other than effects imposed by amended and existing statutes.

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

The new rule is proposed under Texas Occupations Code, §53.025, which authorizes each licensing authority to issue guidelines relating to the reasons a particular crime is considered to relate to a particular license and any other criteria that affect the decisions of the licensing authority. The new rule is also proposed under Texas Government Code, §411.095, as amended by SB 1075, which authorizes the OCCC to obtain criminal history record information from the DPS that relates to a Chapter 180 applicant or licensee.

Additionally, the new rule is proposed under Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking an RMLO license. The new rule is also proposed under Texas Finance Code, §180.054, which authorizes the OCCC to collect criminal history information regarding RMLOs using the Nationwide Mortgage Licensing System and Registry (NMLS) as a channeling agent, and under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements for conducting background checks and other activities necessary for participation in the NMLS.

The statutory provisions affected by the proposed new rule are contained in Texas Occupations Code, Chapter 53, Texas Government Code, §411.095, and Texas Finance Code, Chapters 180, 342, 347, 348, and 351.

§2.106. Denial, Suspension, or Revocation Based on Criminal History.

(a) Criminal history record information. After an applicant submits a complete application to NMLS, including a set of fingerprints, and pays the fees required under §2.104 of this title (relating to Application and Renewal Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprint information has been initially processed.

(b) Disclosure of criminal history by applicant. The applicant must disclose all criminal history information required to file a complete application with NMLS. Failure to provide any information required by NMLS or requested by the OCCC reflects negatively on the applicant's character and general fitness to hold a license. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensed residential mortgage loan originator, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Originating residential mortgage loans involves making representations to borrowers regarding the terms of the loan and collecting charges in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to hold a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to financial responsibility, character, or general fitness. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that relates to financial responsibility, character, or general fitness to hold a license, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A). Crimes that relate to financial responsibility, character, or general fitness include the following:

(1) fraud, misrepresentation, deception, or forgery;

(2) breach of trust or other fiduciary duty;

(3) dishonesty or theft;

(4) money laundering;

(5) assault;

(6) violation of a statute governing lending of this or another state;

(7) failure to file a required report with a governmental body, or filing a false report; or

(8) attempt, preparation, or conspiracy to commit one of the preceding crimes.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) a conviction for, or plea of guilty or nolo contendere to, a felony during the preceding seven years or a felony involving an act of fraud, dishonesty, breach of trust, or money laundering, as provided by Texas Finance Code, §180.055(a)(2) and §180.201(2)(A);

(4) a material misstatement or failure to provide information in a license application, as provided by Texas Finance Code, §180.201(2); and

(5) any other information indicating that the financial responsibility, character, or general fitness of the applicant or licensee do not command the confidence of the public or do not warrant the determination that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of Texas Finance Code, Chapter 180 and other appropriate regulatory laws of this state, as provided by Texas Finance Code, §180.055(a)(3) and §180.201(2)(A).

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502360

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: August 2, 2015

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



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

#### SUBCHAPTER A. REGISTRATION PROCEDURES

##### 7 TAC §§88.102, 88.107, 88.110

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §88.102, concerning Filing of New Application, and §88.107, concerning Fees. The commission also proposes new 7 TAC §88.110, concerning Denial, Suspension, or Revocation Based on Criminal History, for debt management services providers.

In general, the purpose of the proposal is to implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). The proposal also implements Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for a debt management services provider registration to provide fingerprints. The proposal implements Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration. In addition, the proposal implements Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for debt management services provider applicants and registrants.

Debt management services providers are registered in Texas under Chapter 394 of the Texas Finance Code. SB 1075 amends Texas Government Code, §411.095 by adding Chapter 394 of the Finance Code to the list of chapters under which the OCCC may obtain criminal history record information from the Department of Public Safety (DPS) relating to an individual applying for or holding a registration.

The proposed amendments to §88.102, concerning Filing of New Application, add paragraph (9) to subsection (b), describing which individuals must submit fingerprints as part of a registration application in order to comply with Texas Finance Code, §14.152, as amended by SB 1075. In particular, paragraph (9)(A) explains that each principal party must provide a set of fingerprints.

The proposed amendments to §88.107, concerning Fees, add a subsection explaining that the applicant must pay a fee to a party designated by DPS for processing fingerprints.

Proposed new §88.110 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a debt management services provider registration.

Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose.

Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the registered occupation of a debt management services provider. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a debt management services provider, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a registrant, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or registrant unfit, as provided by Texas Occupations Code, §53.023.

Subsection (d) identifies offenses involving moral turpitude that may be used as the basis for a denial, suspension, or revocation action by the OCCC. This provision is based on Texas Finance Code, §394.204(i)(1), which authorizes the OCCC to deny an application based on offenses related to moral turpitude.

Subsection (e) explains that the OCCC will revoke a registration on the registrant's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

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

Commissioner Pettijohn has also determined that for each year of the first five years the rule changes are in effect the public benefit anticipated as a result of the proposal will be that the commission's rules will implement recent legislation and allow the OCCC to perform a more complete review of debt management services provider applicants. Additional public benefits are that the commission's rules will be more easily understood by registrants required to comply with the rules and the rules will be more easily enforced.

Any costs required are imposed by the Texas Legislature through the enactment of SB 1075, as well as the existing requirements in the Texas Occupations Code, and are not a result of the proposal. For example, in order for the OCCC to properly review criminal history, debt management services provider applicants will be required to pay fingerprinting fees to third parties. Some applicants and registrants may be required to obtain court documents or other evidence of criminal disposition, possibly incur-

ring other fees. These costs are imposed by the statutory provisions and not by the proposal. Thus, aside from the costs required by amended and existing statutes, the OCCC does not anticipate any additional costs to persons who are required to comply with the proposal.

There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the proposed rule changes, other than effects imposed by amended and existing statutes.

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

The rule changes are proposed under Texas Government Code, §411.095, as amended by SB 1075. The rule changes are also proposed under Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for a debt management services provider registration to provide fingerprints. In addition, the rule changes are proposed under Texas Occupations Code, §53.025, which authorizes each licensing authority to issue guidelines relating to the reasons a particular crime is considered to relate to a particular license or registration and any other criteria that affect the decisions of the licensing authority.

Additionally, the rule changes are proposed under Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration. The rule changes are also proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 53, Texas Government Code, §411.095, and Texas Finance Code, §14.152 and Chapter 394, Subchapter C.

*§88.102. Filing of New Application.*

(a) (No change.)

(b) The application must include the following required forms and filings. All questions must be answered.

(1) - (8) (No change.)

(9) Fingerprints.

(A) The applicant must provide a complete set of legible fingerprints for each person meeting the definition of "principal party" in §88.101 of this title (relating to Definition). All fingerprints must be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(B) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (3) of this subsection does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

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

(D) For individuals who have previously been registered by the OCCC and principal parties of entities currently registered, fingerprints are not required to be provided with the initial application if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, the OCCC may require individuals and principal parties previously registered with the OCCC to submit a new set of fingerprints.

(E) For individuals who have previously submitted fingerprints to another state agency, fingerprints are still required to be submitted for use by the OCCC under Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

*§88.107. Fees.*

(a) (No change.)

(b) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable.

(c) ~~[(b)]~~ Registration amendments. A fee of \$25 must be paid each time a registered provider amends a registration by changing the assumed name of the registered provider, inactivating an active registration, or relocating the registered provider location.

(d) ~~[(e)]~~ Registration duplicates. The fee for a registration duplicate is \$10.

(e) ~~[(d)]~~ Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §88.103 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, attorney's fees, or investigative costs, if applicable.

(f) ~~[(e)]~~ Annual assessments. An annual fixed fee not to exceed \$430 is required for each registered debt management services provider.

*§88.110. Denial, Suspension, or Revocation Based on Criminal History.*

(a) Criminal history record information. After an applicant submits a complete registration application, including all required fingerprints, and pays the fees required by §88.107 of this title (relating to Fees), the OCCC will investigate the applicant. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the

belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to registered occupation. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of an offense that directly relates to the duties and responsibilities of a debt management services provider, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing debt management services involves making representations to consumers regarding the terms of the services, holding money entrusted to the provider, remitting money to third parties, and collecting charges in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a registrant and may be grounds for denial, suspension, or revocation.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a registration, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a registration to engage in the occupation;

(C) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registrant.

(3) In determining whether a conviction for a crime renders an applicant or a registrant unfit to be a registrant, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a registration, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Offenses involving moral turpitude. The OCCC may deny a registration application, or suspend or revoke a registration, if the applicant or registrant has been convicted of or found civilly liable for an offense involving moral turpitude, as provided by Texas Finance Code, §394.204(i)(1), (k)(1) - (2). Offenses involving moral turpitude include the following:

(1) forgery;

(2) embezzlement;

(3) obtaining money under false pretenses;

(4) larceny;

(5) extortion;

(6) conspiracy to defraud; and

(7) any other similar offense or violation.

(e) Revocation on imprisonment. A registration will be revoked on the registrant's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a registration application, or suspend or revoke a registration, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the registration application, as provided by Texas Finance Code, §394.204(h);

(4) a fact or condition that would have been grounds for denying the registration application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §394.204(k)(1) - (2); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §394.204(i)(3), (k)(9).



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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502354

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: August 2, 2015

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



## PART 6. CREDIT UNION DEPARTMENT

### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

#### SUBCHAPTER D. POWERS OF CREDIT UNIONS

##### 7 TAC §91.401

The Credit Union Commission (the Commission) proposes amendments to §91.401 concerning Purchase, Lease or Sale of Fixed Assets. The amendments change the title of the rule to "Credit Union Ownership of Property" to better reflect the scope and purpose of the rule. The amendments streamline and clarify definitions of terms, reduce the requirement for credit unions to obtain prior approval from the Department to invest in premises, explain the standards for evaluating a request to invest in credit union premises in an amount that exceeds the credit union's net worth, explain that the Department may impose special conditions for approval of such a request in order to protect the safety and soundness of the credit union, and eliminate the specific format requirements for the written request to the Department.

The amendments proposed allow more flexibility to credit unions for investments in property and will result in reduced regulatory burden for credit unions.

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

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

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

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subtitle

D of the Texas Finance Code, and under Texas Finance Code, §123.103, which concerns credit union powers to purchase and sell property.

The specific section affected by the proposed rule is Texas Finance Code, §123.103.

§91.401. Credit Union Ownership of Property [*Purchase, Lease, or Sale of Fixed Assets*].

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

(1) Equipment includes all movable furniture, fixtures, and equipment of the credit union, its branch offices, and consolidated credit union service organizations, including automobiles and other vehicles, and any lien on the above. [~~Fixed Assets--real property, premises, furniture, fixtures and equipment.~~]

(2) Immediate family member--a spouse or other family member living in the same household. [~~Furniture, fixtures, and equipment--all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment, including capitalized leases of such items.~~]

(3) Premises include the cost less accumulated depreciation, of land and buildings actually owned and occupied (or to be occupied) by the credit union, its branch offices, and consolidated credit union service organizations. This includes vaults, fixed machinery, parking facilities, and real estate acquired and intended, in good faith, for future expansion. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises. [~~Immediate family member--a spouse or other family member living in the same household.~~]

(4) Real property--land and anything growing on, attached to, or erected on it that is acquired and intended primarily for the credit union's own use in conducting business. It does not include any real property which may be conveyed to the credit union in satisfaction of debts previously contracted in the course of business, nor any real estate that the credit union purchases at sale on judgments, decrees, mortgage or deed of trust foreclosures under a security agreement held by the credit union. [~~Premises--any office, service center, parking lot, or other facility where the credit union transacts or intends to transact business. It also includes capitalized leases, leasehold improvements, and remodeling costs to existing premises.~~]

(5) Senior Management Employee--the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer. [~~Real property--land and anything growing on, attached to, or erected on it that is acquired and intended primarily for the credit union's own use in conducting business. It does not include any real property which may be conveyed to the credit union in satisfaction of debts previously contracted in the course of business, nor any real estate that the credit union purchases at sale on judgments, decrees, mortgage or deed of trust foreclosures under a security agreement held by the credit union.~~]

{(6) Senior Management Employee--the chief executive officer, any assistant chief executive officers (e.g. vice presidents and above) and the chief financial officer.}

(b) Investment Limitations on Premises. Without the prior written consent of the Department, a credit union may not directly or indirectly invest an amount in excess of its net worth in premises. [~~Fixed Asset Investment Limitations. A credit union may purchase fixed assets or enter into a contract for the purchase or lease of fixed assets primarily for its own use in conducting business if the aggregate of all~~]

such investments does not exceed the lesser of 70% of the credit union's net worth or six percent of total assets.]

(c) Restrictions on Ownership of Property.

~~[(1)]~~ A credit union shall not acquire premises [purchase real estate (land or buildings)] for the principal purpose of engaging in real estate rentals or speculation.

~~[(2)]~~ A credit union bidding at a foreclosure or similar sale shall not bid a larger amount than is necessary to satisfy the debts and costs owed the credit union.]

(d) Transactions with insiders. Without the prior approval of a disinterested majority of the board of directors recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the commissioner, a credit union may not directly or indirectly:

(1) sell or lease an asset of the credit union to a director, committee member, or senior management employee, or immediate family members of such individual; or

(2) purchase or lease an asset in which a director, committee member, senior management employee, or immediate family members of such individual has an interest.

(e) Use requirement for premises. If real property or leasehold interest is acquired and intended, in good faith, for use in future expansion, the credit union must partially satisfy the "primarily for its own use in conducting business" requirement within five years after the credit union makes the investment.

(f) Consent to Exceed Limitation. Generally, a credit union need not obtain the Department's approval to invest in premises. However, prior approval is required if the total aggregate investment in premises will exceed the credit union's net worth. A credit union shall submit such statements and reports as the Department may require in support of the higher investment limit. ~~[Waiver. The commissioner may, upon written application, waive or modify any of the limitations or restrictions placed on the investment of fixed assets.]~~

(1) When analyzing an application for an additional investment in credit union premises, the Department will consider:

(A) Consistency with safe and sound credit union practices;

(B) The reasonableness of the amount of credit union premises and the annual expenditures required to carry them relative to the credit union's net worth and the nature and volume of operations; and

(C) The effect of the investment on future earnings.

(2) The Department will consider denying a request for an additional investment in credit union premises when:

(A) The additional investment would have a material negative effect on the credit union's earnings, capital, or liquidity; or

(B) The credit union has not demonstrated a reasonable need for the additional investment.

(3) The Department may impose appropriate special conditions for an approval of an additional credit union premises investment, if it determines that they are necessary or appropriate to protect the safety and soundness of the credit union or to further other supervisory or policy considerations.

~~[(g)]~~ Written application. A credit union requesting a waiver or modification of the fixed asset investment limits, shall submit state-

ments and reports required by the commissioner, including but not limited to:]

~~[(1)]~~ a description of the proposal's cost, usage, location, and method of financing;]

~~[(2)]~~ a statement of the business reasons for making the investment and the economic advantages and disadvantages relating to the proposed investment;]

~~[(3)]~~ evidence in the form of financial statements with supporting assumptions that the increase in operating expenses caused by the project can be supported after accounting for the current level of expenses and dividend commitments; and]

~~[(4)]~~ the credit union's latest balance sheet, income statement, loan delinquency report, and a budget reflecting the new fixed asset.]

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502353

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: August 2, 2015

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



## SUBCHAPTER H. INVESTMENTS

### 7 TAC §91.802

The Credit Union Commission (the Commission) proposes amendments to §91.802 concerning Other Investments. The amendments add definitions of certain terms, clarify and amend existing terms in the rule, and explain the standard for understanding terms not explicitly defined in the rule.

The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

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

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

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

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §124.351, which explains permitted investments.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

§91.802. *Other Investments.*

(a) Definitions. Unless the context clearly indicates otherwise, these words and terms, when used in this section, shall have the following meanings. Any technical words, terms, or phrases that are not specifically defined in this section shall be construed in a manner consistent with the Texas Code of Construction Act (Tex. Govt. Code §311.001).

(1) Asset-backed security--A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(2) Bailment for hire contract--A contract whereby a third party, bank, or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers; also known as a custodial agreement.

(3) Bankers' acceptance--A time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(4) Borrowing repurchase transaction--A transaction whereby a credit union either:

(A) agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price; or

(B) borrows funds from a counterparty and collateralizes the loan with securities owned by the credit union.

(5) [(4)] Cash forward agreement--An agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of 30 days from the trade date.

(6) [(5)] Counterparty--An entity with which a credit union conducts investment-related activities in such a manner as to create a credit risk exposure for the credit union to the entity.

(7) [(6)] Eurodollar deposit--A deposit denominated in U. S. dollars in a foreign branch of a United States financial institution.

(8) [(7)] Federal funds transaction--A short-term or open-ended transfer of funds to a financial institution.

(9) [(8)] Financial institution--A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, a federal or state-chartered credit union, or the National Credit Union Central Liquidity Facility.

(10) [(9)] Investment--Any security, obligation, account, deposit, or other item authorized for investment by the Act or this section. For the purposes of this section, the term does not include an investment authorized by §124.351(a)(1) of the Texas Finance Code [Act].

(11) Investment repurchase transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.

(12) [(10)] Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41).

(13) [(11)] Nationally recognized statistical rating organization (NRSRO)--A rating organization such as Standard and Poor's,

Moody's, or Fitch which is recognized by the Securities and Exchange Commission

(14) [(12)] Ordinary care--The degree of care, which an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

[(13) Investment repurchase transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.]

[(14) Borrowing repurchase transaction--A transaction whereby a credit union either:]

[(A) agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price; or]

[(B) borrows funds from a counterparty and collateralizes the loan with securities owned by the credit union.]

(15) Security--An investment that has a CUSIP number or that is represented by a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

(A) either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;

(B) is of a type commonly traded on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or traded as a medium for investment; and

(C) either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

(16) Settlement date--The date originally agreed to by a credit union and a vendor for settlement of the purchase or sale of a security.

(17) Small business-related securities--Is a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)). This definition does not include Small Business Administration securities permissible under section 107(7) of the Federal Credit Union Act.

(18) [(17)] Trade date--The date a credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(19) [(18)] Yankee dollar deposit--A deposit in a United States branch of a foreign bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, that is licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

(b) Policy. A credit union may invest funds not used in loans to members, subject to the conditions and limitations of the written investment policy of the board of directors. The investment policy may be part of a broader, asset-liability management policy. The board of directors must review and approve the investment policy at least annually to ensure that the policies adequately address the following issues:

(1) The types of investments that are authorized to be purchased.

(2) The aggregate limit on the amount that may be invested in any single investment or investment type, set as a percentage of net worth. This requirement does not apply to certificates of deposit or other accounts issued by a financial institution that are fully insured (including accumulated interest) by either the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(3) The delegation of investment authority to the credit union's officials or employees, including the person or persons authorized to purchase or sell investments, and a limit of the investment authority for each individual or committee.

(4) The authorized broker-dealers or other third-parties that may be used to purchase or sell investments, and the internal process for assessing the credentials and previous record of the individual or firm.

(5) The risk management framework given the level of risk in the investment portfolio. This will include specific methods for evaluating, monitoring, and managing the credit risk, interest-rate risk, and liquidity risk from the investment activities.

(6) The authorized third-party safekeeping agents.

(7) If the credit union operates a trading account, the policy shall specify the persons authorized to engage in trading account activities, trading account size limits, stop loss and sale provisions, time limits on inventoried trading account investments, and internal controls that specify the segregation of risk-taking and monitoring activities related to trading account activities.

(8) The procedure for reporting to the board of directors investments and investment activities that become noncompliant with the credit union's investment policy subsequent to the initial purchase.

(c) Authorized activities.

(1) General authority. A credit union may contract for the purchase or sale of a security provided that delivery of the security is by regular-way settlement. Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for that type of security. All purchases and sales of investments must be delivery versus payment (i.e., payment for an investment must occur simultaneously with its delivery).

(2) Cash forward agreements. A credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(A) the period from the trade date to the settlement date does not exceed 90 days;

(B) if the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(C) if the credit union is the seller, it owns the security on the trade date; and

(D) the cash forward agreement is settled on a cash basis at the settlement date.

(3) Investment repurchase transactions. A credit union may enter an investment repurchase transaction provided:

(A) the purchase price of the security obtained in the transaction is at or below the market price;

(B) the repurchase securities are authorized investments under Texas Finance Code §124.351 or this section;

(C) the credit union has entered into signed contracts with all approved counterparties;

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO; and

(E) the credit union receives a daily assessment of the market value of the repurchase securities, including accrued interest, and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction.

(4) Borrowing repurchase transactions. A credit union may enter into a borrowing repurchase transaction, which is a borrowing transaction subject to §123.201 of the Texas Finance Code [Aet], provided:

(A) any investments purchased by the credit union with either borrowed funds or cash obtained by the credit union in the transaction are authorized investments under Texas Finance Code §124.351 and this section;

(B) the credit union has entered into signed contracts with all approved counterparties; and

(C) investments referred to in subparagraph (A) of this paragraph mature no later than the maturity date of the borrowing repurchase transaction; and

(D) the counterparty is rated in one of the three highest long-term or counterparty rating categories by a NRSRO.

(5) Federal funds. A credit union may enter into a federal funds transaction with a financial institution, provided that the interest or other consideration received from the financial institution is at the market rate for federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(6) Yankee dollars. A credit union may invest in yankee dollar deposits.

(7) Eurodollars. A credit union may invest in eurodollar deposits.

(8) Bankers' acceptance. A credit union may invest in bankers' acceptances.

(9) Open-end Investment Companies (Mutual Funds). A credit union may invest funds in an open-end investment company established for investing directly or collectively in any investment or investment activity that is authorized under Texas Finance Code §124.351 and this section, including qualified money market mutual funds as defined by Securities and Exchange Commission regulations.

(10) U.S. Government-sponsored enterprises. A credit union may invest in obligations of U.S. Government [government]-sponsored enterprises [enterprise obligations] such as, for example: the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Federal Farm Credit Bank[, and the Student Loan Marketing Association].

(11) Commercial paper. A credit union may invest in commercial paper issued by a corporation domiciled within the United States and having a short-term or commercial paper rating of no less than A1 or P1 by Standard & Poor's or Moody's, respectively, or an equivalent rating by a NRSRO.

(12) Corporate bonds. A credit union may invest in corporate bonds issued by a corporation domiciled in the United States. The bonds must be rated by a NRSRO in one of the two highest long-term rating categories and have remaining maturities of seven [five] years or less.

(13) Municipal bonds. A credit union may invest in municipal bonds rated by a NRSRO in one of the two highest long-term rating categories with remaining maturities of seven [five] years or less.

(14) Mortgage-related securities. With the exception of [~~"accrual bonds" (or Z bonds) or~~] the residual interest of the mortgage-related security, a credit union may invest in mortgage-related securities backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, or a residential manufactured home. The security must be rated by a NRSRO in one of the two highest long-term rating categories.

(15) Asset-backed securities. Provided the underlying collateral is domestic- and consumer-based, a credit union may invest in asset-backed securities which are rated by a NRSRO in one of the two highest long-term rating categories.

(16) Small business-related securities. A credit union may invest in small business-related securities that represent an interest in one or more promissory notes or leases of personal property evidencing the obligation of a domestic small business concern and originated by a financial institution, insurance company, or similar institution which is regulated and supervised by a Federal or State authority. The securities must be rated by a NRSRO in one of the two highest long-term rating categories and have remaining maturities of seven years or less.

(17) Derivative authority. A credit union may enter into certain derivative transactions exclusively for the purpose of decreasing interest rate risk. The transaction is used to manage risk arising from otherwise permissible credit union activities and not entered into for speculative purposes. Permissible derivatives include interest rate swaps, options on swaps, interest rate caps, interest rate floors, and Treasury futures. Derivative authority is restricted to the provisions outlined under Subpart B of Part 703 of the National Credit Union Administration Rules and Regulations.

(d) Documentation. A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgment in exercising the investment powers under the Act and this rule including:

(1) Except for investments that are issued, insured or fully guaranteed as to principal and interest by the U.S. Government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation, a credit union must conduct and document a credit analysis of the issuing entity and/or investment before purchasing the investment. The credit union must update the credit analysis at least annually as long as the investment is held.

(2) Credit and other due diligence documentation for each investment shall be maintained as long as the credit union holds the investment and until it has been both audited and examined. Before purchasing or selling a security, a credit union must obtain either price quotations on the security (or a similarly-structured security) from at least two broker-dealers or a price quotation on the security (or similarly-structured security) from an industry-recognized information provider. If a credit union is unable to obtain a price quotation required by this subsection for a particular security, then it can compare prices using nominal or option-adjusted spreads, or spreads to TBA (to-be-announced) mortgage backed securities. This requirement to obtain a price quotation does not apply to new issues purchased at par or at original issue discount.

(3) The reference to and use of NRSRO credit ratings in this rule provides a minimum threshold and is not an endorsement of the quality of the ratings. Credit unions must conduct their own

independent credit analyses to determine that each security purchased presents an acceptable credit risk, regardless of the rating.

(e) Classification. A credit union must classify a security as hold-to-maturity, available-for-sale, or trading, in accordance with generally accepted accounting principles and consistent with the credit union's documented intent and ability regarding the security.

(f) Purchase or Sale of Investments Through a Third-Party.

(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or is a financial institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following information.

(A) The background of the primary sales representative and the local broker-dealer firm with whom the credit union is doing business, using information available from federal or state securities regulators and securities industry self-regulatory organizations, such as the Financial Industry Regulatory Authority and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer firm, its affiliates, or associated personnel.

(B) If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, long-term or counterparty ratings that have been assigned by NRSROs, reports of NRSROs, relevant disclosure documents such as annual independent auditor reports, and other sources of financial information.

(3) Paragraphs (1) and (2) of this subsection do not apply when a credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other financial institution.

(g) Discretionary Control Over Investments and Investment Advisers.

(1) Except as provided in paragraph (2) of this subsection, a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from the investment adviser and is required to authorize a recommended purchase or sale transaction before its execution.

(2) A credit union may delegate discretionary control over the purchase and sale of investments in an aggregate amount not to exceed 100% of its net worth at the time of delegation to persons other than the credit union's officials or employees, provided each such person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b).

(3) Before transacting business with an investment adviser to which discretionary control has been granted, and annually thereafter, a credit union must analyze the adviser's background and information available from federal and state securities regulators and securities industry self-regulatory organizations, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

(4) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of invest-

ments on a per transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

(5) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and their performance.

(h) Investment Practice Permitted to Federal Credit Unions. If an applicant credit union proposes to make the same type of investment which a federally chartered credit union has been granted permission to make, the commissioner shall grant the application unless the commissioner finds that due to the financial position or the state of management of the applicant credit union, the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union. The commissioner may instead grant the application conditionally, grant in modified form, or deny the application.

(i) Modification or Revocation of Investment Authority. If the commissioner finds that due to the financial condition or management of a credit union, an investment practice authorized by this section has ceased to be a safe and prudent practice, the commissioner shall inform the board of directors of the credit union, in writing, that the authority to engage in the practice has been revoked or modified. The credit union's directors and management shall immediately take steps to begin liquidating the investments in question or make the modification required by the commissioner. The commissioner for cause shown may grant the credit union a definite period of time to comply with the commissioner's orders. Credit unions which continue to engage in investment practices after their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound practice and a willful violation of an order of the commissioner and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

(j) Waivers.

(1) The commissioner in the exercise of discretion may grant a written waiver, consistent with safety and soundness principles, of a requirement or limitation imposed by this subchapter. A decision to deny a waiver is not subject to appeal. A waiver request must contain the following:

- (A) A copy of the credit union's investment policy;
  - (B) The higher limit or ratio sought;
  - (C) An explanation of the need to raise the limit or ratio;
- and
- (D) Documentation supporting the credit union's ability to manage this activity;

(2) In determining action on a waiver request made under this subsection, the commissioner will consider the:

(A) Credit union's financial condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

(B) Adequacy of the credit union's policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if the waiver is approved.

(C) Credit union's record of investment performance. If the credit union's record of performance is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(D) Credit union's level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502357

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: August 2, 2015

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



### 7 TAC §91.803

The Credit Union Commission (the Commission) proposes amendments to §91.803 concerning Investment Limits and Prohibitions. The amendments reduce the limitations on investments by exempting federally-insured deposits and investments, to the extent that those amounts are federally insured. The amendments also clarify certain activities in the list of prohibited activities, reduce restrictions on certain activities in the list of prohibited activities, and add certain activities to the list of prohibited activities.

The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

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

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

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

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §124.351 and §124.352 which address permitted investments and limitations on investments for credit unions.

The specific sections affected by the proposed amended rule is Texas Finance Code, §124.351 and §124.352.

#### §91.803. *Investment Limits and Prohibitions.*

(a) Limitations. With the exception of deposits held by a Federal Reserve Bank, a [A] credit union may invest no more than 50% of its net worth with any single obligor or related obligors. This limitation also does not apply to the extent that the investment is insured or guaranteed by the United States government, [investments issued by, or fully guaranteed as to principal and interest by, the United States]

or an agency, enterprise, corporation, or instrumentality of the United States government, or to any trust or trusts established for investing, directly or collectively, in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation.

(b) Designated Depository. As a single exception to subsection (a) of this section, a credit union's board of directors may establish the maximum aggregate deposit limit for a single financial institution approved by the board as the credit union's designated depository. This deposit limit shall be a percentage of net worth and must be based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy. This authority is contingent upon the credit union appropriately documenting its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the maximum aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) Prohibited Activities.

(1) Definitions.

(A) Adjusted trading--selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

(B) Collateralized mortgage obligation (CMO)--a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) Commercial mortgage related security--a mortgage related security except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multi-family dwelling consisting of more than four units.

(D) ~~[(C)]~~ Fair value--the price at which a security can be bought or sold in a current, ~~arm's~~ arms length transaction between willing parties, other than in a forced or liquidation sale.

(E) ~~[(D)]~~ Real estate mortgage investment conduit (REMIC)--a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(F) ~~[(E)]~~ Residual interest--the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(G) ~~[(F)]~~ Short sale--the sale of a security not owned by the seller.

(H) ~~[(G)]~~ Stripped mortgage-backed security--a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities. ~~[Some mortgage-backed securities represent essentially principal-only cash flows with nominal interest cash flows or essentially interest-only cash flows with nominal principal cash flows. These securities are considered SMBSs for the purposes of this rule.]~~

(I) ~~[(H)]~~ Zero coupon investment--an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

(2) A credit union may not:

(A) Use [Purchase or sell] financial derivatives for replication or for any purposes other than hedging [such as futures, options, interest rate swaps, or forward rate agreements];

(B) Engage in adjusted trading or short sales;

(C) Purchase stripped mortgage backed securities[, residual interests in CMOs/REMICs, mortgage servicing rights, commercial mortgage related securities, or small business related securities];

(D) Purchase residual interests in CMOs/REMICs, or other structured mortgage backed securities [Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date];

(E) Purchase mortgage servicing rights as an investment but may retain mortgage servicing rights on a loan originated by the credit union and sold on the secondary market [Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits; or];

(F) Purchase commercial mortgage related securities of an issuer other than a U.S. Government sponsored enterprise; used as collateral by a safekeeping concern.]

(G) Purchase any security that has the capability of becoming a first credit loss piece which supports another more senior security;

(H) Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(I) Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits;

(J) Purchase securities used as collateral by a safekeeping concern;

(K) Purchase exchangeable mortgage backed securities, unless they are fully compliant with the provisions outlined in Part 703 of the National Credit Union Administration Rules and Regulations; or

(L) Purchase securities convertible into stock at the option of the issuer.

(d) Investment pilot program.

(1) The commissioner may authorize a limited number of credit unions to engage in other types of investment activities under an investment pilot program. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:

(A) Board policies approving the activities and establishing limits on them;

(B) A complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;

(C) A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

(D) Examples of reports the credit union will generate to monitor the activities;

(E) A projection of the associated costs of the activities, including personnel, computer, audit, etc.;

(F) A description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff

and/or official(s) responsible for implementing and overseeing the activities; and

(G) The internal control procedures that will be implemented, including audit requirements.

(2) In connection with a request to participate in an investment pilot program, the commissioner will consider the general nature and functions of credit unions, as well as the specific financial condition and management of the applicant credit union, as revealed in the request, examinations, or such other information as may be available to the commissioner. The commissioner may approve the request, approve the request conditionally, approve it in modified form, or deny it in whole or in part. A decision by the commissioner concerning participation in an investment pilot program is not appealable.

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, or has become inconsistent with applicable state or federal law, or has ceased to be a safe and prudent practice for one or more particular credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its affairs to comply with the commissioner's direction. Credit unions which continue to engage in investment practices where their authority to do so has been revoked or modified will be deemed to be engaging in an unsound practice.

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

Filed with the Office of the Secretary of State on June 19, 2015

TRD-201502356

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: August 2, 2015

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



## 7 TAC §91.805

The Credit Union Commission (the Commission) proposes amendments to §91.805 concerning Loan Participation Investments. The amendments clarify permitted participation interests and eliminates the specific limitation on aggregate investment amounts, instead requiring credit unions to develop and follow investment policies and agreements to ensure the soundness of each credit union's loan participation investments.

The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

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

Ms. McLarty has also determined that for each year of the first five years the proposed amendments are in effect, the

public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

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

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §124.351, which explains permitted investments for credit unions.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

### §91.805. *Loan Participation Investments.*

(a) A credit union may purchase a participation interest in a ~~[non-member] loan where the borrower is neither a member of the credit union or a member of another participating credit union, [from a corporation, credit organization, or financial organization,]~~ as permitted by §124.351(a)(8) of the Texas Finance Code [Act], provided the following conditions are satisfied ~~[credit union]~~:

(1) the purchase complies with all regulatory requirements to the same extent as if the credit union had originated the loan [is specifically empowered to purchase such investments in the board's written investment policy];

(2) the originating lender retains at least 10 percent of the outstanding balance of the loan through the life of the loan [does not obtain an interest greater than 90% of the face amount of each individual loan, if the borrower is not a member of the credit union or a member of another participating credit union];

(3) the purchase complies with the credit union's investment policy, which, at a minimum, must: [uses the same underwriting standards for loan participation investments as it does for loans originated by the credit union; and]

(A) establish the same degree of independent credit and collateral analysis as if the credit union was the originator; and

(B) establish commitment limits for aggregate purchased participations, out-of-area participations, and loans originated by individual lead institutions.

(4) the written loan participation agreement fully describes the lead institution's responsibilities, establishes requirements for obtaining timely borrower credit information, addresses remedies upon default, and outlines dispute resolution procedures. [Limits its aggregate investment in loan participation investments to an amount no greater than 50% of the credit union's net worth.]

(b) Financial Reporting. A participation interest in a ~~non-credit union~~ member loan purchased under this section shall be reported in accordance with generally accepted accounting principles.

(c) Other Requirements. A credit union purchasing a loan participation investment must also comply with applicable requirements contained within Part 741 of the National Credit Union Administration Rules and Regulations.

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



Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502358

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: August 2, 2015

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



## SUBCHAPTER I. RESERVES AND DIVIDENDS

### 7 TAC §91.901

The Credit Union Commission (the Commission) proposes amendments to §91.901 concerning Reserve Requirements. The amendments provide for the development of a financial plan for credit unions that are unable to increase the dollar amount of their net worth reserves, as required by §91.901(b)(1). The plan would require these credit unions to develop a detailed timetable of steps to increase their net worth ratio and ultimately achieve compliance. The financial plan would be filed with the Department and would be enforceable as a written agreement with the commissioner under §122.255 of the Finance Code.

The amendments are proposed as a result of the Texas Credit Union Department's (Department) general rule review.

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

Ms. McLarty has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There could be an economic cost to credit unions that are required to comply with the amendment as a result of its future adoption, given credit unions that are less than well capitalized will be required to devote staff time and resources to the development of the financial plan, as failure to file or fulfil the terms of the plan may potentially subject them to other sanctions that could impact their growth opportunities. However, there is no way to accurately project that cost at this time.

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

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §124.351 which explains permitted investments for credit unions.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

*§91.901. Reserve Requirements.*

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

(1) Net worth means the retained earnings balance of the credit union as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management, the insuring organization, or the commission. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. Net worth does not include the allowance for loan and lease losses account.

(2) Net worth ratio means, with respect to a credit union, the ratio of the net worth of the credit union to the total assets of the credit union.

(3) Total assets means the average of the total assets as measured using one of the following methods:

(A) average quarterly balance. The average of quarter-end balances of the four most recent calendar quarters; or

(B) average monthly balance. The average of month-end balances over the three calendar months of the calendar quarter; or

(C) average daily balance. The average daily balance over the calendar quarter; or

(D) quarter-end balance. The quarter-end balance of the calendar quarter as reported on the credit union's call report.

(b) In accordance with the requirements of §122.104 of the Act, state-chartered credit unions shall set aside a portion of their current gross income, prior to the declaration or payment of dividends, as follows:

(1) A credit union with a net worth ratio below 7.0% shall increase the dollar amount of its net worth reserves by the following amounts at the indicated intervals until its net worth ratio equals 7.0% of total assets:

(A) in the case of a monthly dividend period, net worth must increase monthly by an amount equivalent to at least 0.0334% of its total assets; and

(B) in the case of a quarterly, semi-annual or annual dividend period, net worth must increase quarterly by an amount equivalent to at least 0.1% per quarter of its total assets.

(2) For a credit union in operation less than ten years and having assets of less than \$10 million, a business plan must be developed that reflects, among other items, net worth projections consistent with the following:

(A) 2.0% net worth ratio by the end of the third year of operation;

(B) 3.5% net worth ratio by the end of the fifth year of operation;

(C) 6.0% net worth ratio by the end of the seventh year of operation; and

(D) 7.0% net worth ratio by the time it reaches \$10 million in total assets or by the end of the tenth year of operation, whichever is shorter.

(3) Whenever the net worth ratio falls below 7.0%, the credit union shall transfer a portion of its current period net income to its regular reserve in such amounts as described in paragraph (1) of this subsection.

(4) Special reserves. In addition to the regular reserve, special reserves to protect the interest of members may be established by board resolution or by order of the commissioner, from current income or from undivided earnings. In lieu of establishing a special reserve, the

commissioner may direct that all or a portion of the undivided earnings and any other reserve fund be restricted. In either case, such directives must be given in writing and state with reasonable specificity the reasons for such directives.

(5) Insuring organization's capital requirements. As applicable, a credit union shall also comply with any and all net worth or capital requirements imposed by an insuring organization as a condition to maintaining insurance on share and deposit accounts. For federally-insured credit unions this includes all prompt corrective action requirements contained within Part 702 of the NCUA Rules and Regulations.

(6) Decrease in Required Reserve Transfer. The commissioner, on a case-by-case basis, and after receipt of a written application, may permit a credit union to transfer an amount that is less than the amount required under paragraph (1) of this subsection. A credit union shall submit such statements and reports as the commissioner may, in his discretion, require in support of a decreased transfer request. The application must be received no later than 10 days before the quarter end and shall include but not be limited to:

(A) An explanation of the need for the reduced transfer amount;

(B) Financial statement reflecting the fiscal impact of the required transfer; and

(C) Documentation supporting the credit union's ability to resume the required transfer at a future date certain.

(7) Financial Plan. A credit union that is not capable of making the prescribed reserve transfer under paragraph (1) of this subsection for three consecutive quarters, shall file a written financial plan detailing a quarterly timetable of steps the credit union will take to increase its net worth ratio and fully comply with this section in the future. A credit union shall file and implement the financial plan within 45 days of the triggering quarter end date. A credit union may, after prior written notice to the Department, amend its financial plan to reflect a change in circumstances. Failure to meet the terms of the financial plan may be considered a violation of a written agreement with the commissioner under §122.255 of the Finance Code.

(c) Revised business plan for new credit unions. A credit union that has been in operation for less than ten years and has assets of less than \$10 million shall file a written revised business plan within 30 calendar days of the date the credit union's net worth ratio has failed to increase consistent with its current business plan. Failure to submit a revised business plan, or submission of a plan not adequate to either increase net worth or increase net worth within a reasonable time; or failure of the credit union to implement its revised business plan, may trigger the regulatory actions described in subsection (b)(4) of this section.

(d) Unsafe practice. Any credit union which has less than a 6.0% net worth ratio may be deemed to be engaged in an unsafe practice pursuant to §122.255 of the Finance Code. The determination may be abated if the credit union has entered into and is in compliance with a written agreement or order with the department or is in compliance with a net worth restoration or revised business plan approved by the department to increase its net worth ratio. If a credit union has a net worth ratio below 6.0% or is otherwise engaged in an unsafe practice, the department may impose the following administrative sanctions in addition to, or in lieu of, any other authorized supervisory action:

(1) all unencumbered reserves, undivided earnings, and current earnings are encumbered as special reserves;

(2) dividends and interest refunds may not be declared, advertised, or paid without the prior written approval of the commissioner; and

(3) any changes to the credit union's board of directors or senior management staff must receive the prior written approval of the commissioner.

(e) Supervisory action. Notwithstanding any requirements in this section, the department may take enforcement action against a credit union with capital above the minimum requirement if the credit union's circumstances indicate such action would be appropriate.

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502359

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: August 2, 2015

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



## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

##### SUBCHAPTER J. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

###### 10 TAC §5.1009

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 5, Subchapter J, §5.1009, concerning Shelter and Housing Standards.

The purpose of the new rule is to add written standards and procedures for subrecipients that provide shelter and rental assistance activities. The standards and procedures will require subrecipients to regularly inspect the shelters and housing units for which they propose to provide rental assistance, and ensure that shelters, tenants and landlords are aware of program policies regarding the condition of shelters and housing units supported with program funds.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments as any costs that may be incurred in the performance of activities required to comply with the new rule are allowable costs under the program rules and may be charged to the program.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be clarity of program requirements, and improved accountability relating to the quality of assistance being provided. There will not be

significant economic cost to any individuals required to comply with the new rule.

**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.** The public comment period will be held July 3, 2015, to August 3, 2015, to receive input on the new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: [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. AUGUST 3, 2015.**

**STATUTORY AUTHORITY.** The new rule is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

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

§5.1009. Shelter and Housing Standards.

(a) Minimum standards for emergency shelters. Any building for which Homeless Housing and Services Program (HHSP) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety and sanitation standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety and sanitation standards.

(1) Structure and materials. The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with HHSP assistance must use Energy Star and WaterSense products and appliances.

(2) Access. The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.*) as outlined in 10 TAC Chapter 1, Subchapter B, and implementing regulations at 24 CFR Part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.*) and 28 CFR Part 35; where applicable.

(3) Space and security. Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) Interior air quality. Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) Water supply. The shelter's water supply must be free of contamination.

(6) Sanitary facilities. Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.

(7) Thermal environment. The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) Illumination and electricity. The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) Food preparation. Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) Sanitary conditions. The shelter must be maintained in a sanitary condition.

(11) Fire safety. There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(b) Minimum standards for housing for occupancy. HHSP funds cannot help a program participant remain in or move into housing that does not meet the minimum habitability standards below. HHSP funds may assist a program participant in returning the home to the minimum habitability standard in cases where the program participant is the responsible party for ensuring such conditions. In order to ensure continuity of housing, the Subrecipient may provide assistance to a program participant pending a completed housing inspection within thirty (30) days of the assistance being provided. This allowance applies whether the program participant is the responsible party for ensuring such standards or another party is the responsible party. Should the housing not meet the minimum habitability standards thirty (30) days after the initial assistance, no further assistance may be provided to maintain the program participant in that housing.

(1) Structure and materials. The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) Space and security. Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) Interior air quality. Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) Water supply. The water supply must be free from contamination.

(5) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) Thermal environment. The housing must have any necessary heating/cooling facilities in proper operating condition.

(7) Illumination and electricity. The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

(8) Food preparation. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(9) Sanitary conditions. The housing must be maintained in a sanitary condition.

(10) Fire safety.

(A) There must be a second means of exiting the building in the event of fire or other emergency.

(B) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(C) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(c) Shelters and housing for occupancy. Lead-based paint remediation and disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, subparts A, B, H, J, K, M, and R apply to all shelters and all housing units occupied by program participants.

(d) Lead-based paint remediation and disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, subparts A, B, H, J, K, M, and R apply to all shelters and all housing units occupied by program participants.

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502387

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: August 2, 2015

For further information, please call: (512) 475-0471



## SUBCHAPTER K. EMERGENCY SOLUTIONS GRANTS (ESG)

### 10 TAC §5.2002, §5.2004

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter K, §5.2002, Purpose and Use of Funds, and §5.2004, Eligible Applicants.

The purpose of the amendment to §5.2002 is to explicitly prohibit subrecipients from charging occupancy fees for emergency shelter. The purpose of the amendment to §5.2004 is to give the Department flexibility to adapt to changes in the federal rules regarding the types of organizations that could be considered eligible applicants under the ESG.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or

revenues of the state, but may have implications for local governments who have assessed fees for emergency shelter occupancy in the past and have not previously used ESG funds for emergency shelter. The Department is unaware of any shelter that is charging occupancy fees that has previously used ESG funds for emergency shelter.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendment will be clarity of program requirements and programmatic adherence to federal guidelines. There will not be any significant economic cost to any individuals required to comply with the amendments.

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. The public comment period will be held July 3, 2015, to August 3, 2015, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: [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. AUGUST 3, 2015.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

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

#### §5.2002. *Purpose and Use of Funds.*

(a) The purpose of Emergency Solutions Grants (ESG) is to assist people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

(b) ESG eligible activities are:

(1) the rehabilitation or conversion of buildings for use as emergency shelter for the homeless;

(2) the payment of certain expenses related to operating emergency shelters;

(3) essential services related to emergency shelters and street outreach for the homeless;

(4) homelessness prevention and rapid re-housing assistance;

(5) Homeless Management Information Systems (HMIS) activities; and

(6) administrative costs.

(c) Subrecipients are prohibited from charging occupancy fees for emergency shelter supported by funds covered by this subchapter.

(d) [(e)] The Department's Governing Board, Executive Director or his/her designee may limit activities in a given funding cycle or by contract.

#### §5.2004. *Eligible Applicants.*

(a) Eligible Subrecipients are Units of General Local Government; [and] those Private Nonprofit Organization(s) that are secular

or religious organizations as described in §501(c) of the Internal Revenue Code of 1986, are exempt from taxation under Subtitle A of the Code, have an accounting system and a voluntary board, and practice non-discrimination in the provision of assistance; and organizations as described in a Notice of Funding Availability or other funding mechanism.

(b) The Department reserves the option to limit eligible Sub-recipient entities in a given funding cycle.

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502386

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: August 2, 2015

For further information, please call: (512) 475-0471



## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§231.49, 231.65, 231.71, 231.73, 231.75, 231.77, 231.211, 231.213, 231.241, 231.573, and 231.591 and proposes new 19 TAC §§231.81, 231.193, 231.195, 231.395, 231.579, and 231.581, concerning requirements for public school personnel assignments. The sections establish Grades 6-8 and Grades 9-12 assignments. The proposed revisions to 19 TAC Chapter 231, Subchapters C and E, would clarify the appropriate credential for placement in a particular teaching assignment.

Current 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, Subchapters C and E, provide guidance to school districts with regard to the certificates required for Grades 6-8 and Grades 9-12 assignments of public school educators for ease of use by school district personnel.

The proposed revisions to 19 TAC Chapter 231, Subchapters C and E, would identify the appropriate certificates for placement in particular Grades 6-8 and Grades 9-12 classroom assignments.

##### *Subchapter C. Grades 6-8 Assignments*

Language in 19 TAC §231.49 and §231.65 would be amended to clarify some grade level assignments for Grades 7-12 and Grades 8-12 certificates. In addition, §231.65 would be amended to add the Life Science: Grades 7-12 certificate for the Science, Grades 7 and 8, assignment, to renumber the remaining paragraphs accordingly, and to remove the duplicate Science: Grades 8-12 certificate. Language in 19 TAC §§231.71, 231.73, and 231.75 would be amended to specify that there are three levels for Art, Music, and Theatre. Also, 19 TAC §231.77 would be amended to add the Technology Applications:

Grades 7-12 certificate and the remaining paragraph would be renumbered accordingly.

Proposed new 19 TAC §231.81 would be added to address the expansion of the Texas essential knowledge and skills (TEKS) to include a Grades 6-8 assignment for Fine Arts: Dance, Middle School 1-3.

##### *Subchapter E. Grades 9-12 Assignments*

Proposed new 19 TAC §§231.193, 231.195, 231.395, 231.579, and 231.581 would be added to incorporate career and technical education (CTE) courses approved by the SBOE to satisfy mathematics or science credit. Language would be amended in 19 TAC §231.211 and §231.213 to add appropriate certificates for those assignments, and the remaining paragraphs would be renumbered accordingly. Also, language would be amended in 19 TAC §§231.241, 231.573, and 231.591 to clarify that an assignment for Theatre would include Musical Theatre, to remove a training requirement for a Principles of Technology, Grades 9-12, assignment, and to clarify a training requirement for the Practicum in Transportation, Distribution, and Logistics, Grades 9-12, assignment, respectively. These changes provide districts additional flexibility while ensuring educators assigned to teach these courses have the appropriate training in work-based safety and other topics. The proposed change to §231.591(c) is not intended to remove the requirement for training in federal and state requirements for work-based learning and safety, when such training is appropriate to the specific assignment. Instead, the proposed amendment to §231.591(c) more broadly and clearly captures the required training that may be appropriate in any given content area. In addition, the title in Division 18 would be amended to Hospitality and Tourism to align with the TEKS for career and technical education.

The proposed rule actions would have no procedural and reporting implications. Also, the proposed rule actions would have no locally maintained paperwork requirements.

Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed rule actions are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed rule actions.

Mr. Franklin has determined that for the first five-year period the proposed rule actions are in effect the public and student benefit anticipated as a result of the proposed rule actions would be updated requirements relating to the assignment of educators in Texas public schools. There are no additional costs to persons required to comply with the proposed rule actions.

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

The public comment period on the proposal begins July 3, 2015, and ends August 3, 2015. The SBEC will take registered oral and written comments on the proposed rule actions to 19 TAC Chapter 231, Subchapters C and E, at the August 7, 2015, meeting in accordance with the SBEC board operating policies and procedures. 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 [sbecrules@tea.texas.gov](mailto:sbecrules@tea.texas.gov) or faxed to (512) 463-5337. All requests for a public hearing on the proposed rule actions sub-

mitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on July 3, 2015.

## SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

### 19 TAC §§231.49, 231.65, 231.71, 231.73, 231.75, 231.77, 231.81

The amendments and new section are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments and new section implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

#### §231.49. *Reading (At or Above Grade Level), Grades 6-8.*

An assignment in a departmentalized classroom for Reading (at or above grade level), Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

- (1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (2) Bilingual Generalist: Grades 4-8.
- (3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).
- (4) Core Subjects: Grades 4-8.
- (5) Elementary English (Grades 1-8). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.
- (6) Elementary Reading (Grades 1-8).
- (7) Elementary teacher certificate plus 18 semester credit hours in English and nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.
- (8) English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (9) English as a Second Language Generalist: Grades 4-8.
- (10) English Language Arts and Reading: Grades 4-8.
- (11) English Language Arts and Reading: Grades 7-12 (Grades 7 and 8 [Grade 7] only).
- (12) English Language Arts and Reading: Grades 8-12 (Grade 8 only).

(13) English Language Arts and Reading/Social Studies: Grades 4-8.

(14) Generalist: Early Childhood-Grade 6 (Grade 6 only).

(15) Generalist: Grades 4-8.

(16) Junior High School or High School--English.

(17) Junior High School or High School--English Language Arts, Composite. This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(18) Junior High School or High School--Reading.

(19) Master Reading Teacher (Early Childhood-Grade 12).

(20) Reading Specialist.

(21) Reading Specialist (Early Childhood-Grade 12).

(22) Secondary English (Grades 6-8). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(23) Secondary English Language Arts, Composite (Grades 6-8). This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(24) Secondary Reading (Grades 6-8).

(25) Secondary English (Grades 6-12). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(26) Secondary English Language Arts, Composite (Grades 6-12). This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(27) Secondary Reading (Grades 6-12).

(28) Secondary or all-level teacher certificate plus 18 semester credit hours in English and nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

#### §231.65. *Science, Grades 7 and 8.*

An assignment in a departmentalized classroom for Science, Grades 7 and 8, is allowed with one of the following certificates.

(1) Bilingual Generalist: Grades 4-8.

(2) Chemistry: Grades 7-12.

(3) Chemistry: Grades 8-12 (Grade 8 only).

(4) Core Subjects: Grades 4-8.

(5) Elementary Biology.

- (6) Elementary Chemistry.
- (7) Elementary Earth Science.
- (8) Elementary Life/Earth Middle-School Science.
- (9) Elementary Physical Science.
- (10) Elementary Physics.
- (11) Elementary Biology (Grades 1-8).
- (12) Elementary Chemistry (Grades 1-8).
- (13) Elementary Earth Science (Grades 1-8).
- (14) Elementary Life/Earth Middle-School Science (Grades 1-8).
- (15) Elementary Physical Science (Grades 1-8).
- (16) Elementary Physics (Grades 1-8).
- (17) Elementary teacher certificate plus 18 semester credit hours in any combination of sciences.
- (18) English as a Second Language Generalist: Grades 4-8.
- (19) Generalist: Grades 4-8.
- (20) Grades 6-12 or Grades 6-8--Biology.
- (21) Grades 6-12 or Grades 6-8--Chemistry.
- (22) Grades 6-12 or Grades 6-8--Earth Science.
- (23) Grades 6-12 or Grades 6-8--Life/Earth Middle-School Science.
- (24) Grades 6-12 or Grades 6-8--Physical Science.
- (25) Grades 6-12 or Grades 6-8--Physics.
- (26) Grades 6-12 or Grades 6-8--Science.
- (27) Grades 6-12 or Grades 6-8--Science, Composite.
- (28) Junior High School or High School--Biology.
- (29) Junior High School or High School--Chemistry.
- (30) Junior High School or High School--Earth Science.
- (31) Junior High School or High School--Life/Earth Middle-School Science.
- (32) Junior High School or High School--Physical Science.
- (33) Junior High School or High School--Physics.
- (34) Junior High School or High School--Science.
- (35) Junior High School or High School--Science, Composite.
- (36) Life Science: Grades 7-12.
- (37) ~~[(36)]~~ Life Science: Grades 8-12 (Grade 8 only).
- (38) ~~[(37)]~~ Master Science Teacher (Grades 4-8).
- (39) ~~[(38)]~~ Master Science Teacher (Grades 8-12) (Grade 8 only).
- (40) ~~[(39)]~~ Mathematics/Physical Science/Engineering: Grades 6-12.
- (41) ~~[(40)]~~ Mathematics/Physical Science/Engineering: Grades 8-12 (Grade 8 only).
- (42) ~~[(41)]~~ Mathematics/Science: Grades 4-8.
- (43) ~~[(42)]~~ Physical Science: Grades 6-12.
- ~~[(43)]~~ Physical Science: Grades 8-12 (Grade 8 only).
- ~~[(44)]~~ Physics/Mathematics: Grades 7-12.
- ~~[(45)]~~ Physics/Mathematics: Grades 8-12 (Grade 8 only).
- ~~[(46)]~~ Science: Grades 8-12 (Grade 8 only).
- (47) Science: Grades 4-8.
- (48) Science: Grades 7-12.
- (49) Science: Grades 8-12 (Grade 8 only).
- (50) Secondary Biology (Grades 6-12).
- (51) Secondary Chemistry (Grades 6-12).
- (52) Secondary Earth Science (Grades 6-12).
- (53) Secondary Life/Earth Science (Grades 6-12).
- (54) Secondary Physical Science (Grades 6-12).
- (55) Secondary Physics (Grades 6-12).
- (56) Secondary Science (Grades 6-12).
- (57) Secondary Science, Composite (Grades 6-12).
- (58) Secondary or all-level teacher certificate plus 18 semester credit hours in any combination of sciences.
- §231.71. *Art, Middle School 1-3 [Grades 6-8].*  
An assignment in a departmentalized classroom for Art, Middle School 1-3 [Grades 6-8], is allowed with one of the following certificates.
- (1) All-Level Art.
- (2) Art: Early Childhood-Grade 12.
- (3) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (4) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).
- (5) Elementary Art (Grades 1-8).
- (6) Elementary teacher certificate plus 18 semester credit hours in art.
- (7) English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (8) Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (9) Grades 6-12 or Grades 6-8--Art.
- (10) Junior High School or High School--Art.
- (11) Secondary Art (Grades 6-12).
- (12) Secondary or all-level teacher certificate plus 18 semester credit hours in art.
- §231.73. *Music, Middle School 1-3 [Grades 6-8].*  
An assignment in a departmentalized classroom for Music, Middle School 1-3 [Grades 6-8], is allowed with one of the following certificates.
- (1) All-Level Music.
- (2) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).
- (4) Elementary Music.

- (5) Elementary Music (Grades 1-8).
- (6) Elementary teacher certificate plus 18 semester credit hours in music.
- (7) English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (8) Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (9) Grades 6-12 or Grades 6-8--Music.
- (10) Junior High School or High School--Music.
- (11) Music: Early Childhood-Grade 12.
- (12) Secondary Music (Grades 6-12).
- (13) Secondary or all-level teacher certificate plus 18 semester credit hours in music.

§231.75. Theatre, Middle School 1-3 [Grades 6-8].

An assignment in a departmentalized classroom for Theatre, Middle School 1-3 [Grades 6-8], is allowed with one of the following certificates.

- (1) All-Level Speech and Drama.
- (2) All-Level Speech Communications/Theatre Arts (Prekindergarten-Grade 12).
- (3) Elementary Drama.
- (4) Elementary Theatre Arts (Grades 1-8).
- (5) Elementary teacher certificate plus 18 semester credit hours in theatre arts/drama.
- (6) Grades 6-12 or Grades 6-8--Theatre Arts.
- (7) Junior High School or High School--Drama.
- (8) Junior High School or High School--Speech and Drama.
- (9) Secondary Theatre Arts (Grades 6-12).
- (10) Secondary or all-level teacher certificate plus 18 semester credit hours in theatre arts/drama.
- (11) Theatre: Early Childhood-Grade 12.

§231.77. Technology Applications, Grades 6-8.

An assignment in a departmentalized classroom for Technology Applications, Grades 6-8, is allowed with one of the following certificates.

- (1) Elementary teacher certificate plus verification of competency to teach computer literacy.
- (2) Grades 6-12 or Grades 6-8--Computer Information Systems.
- (3) Information Processing Technologies Endorsement (Level I or II).
- (4) Junior High School or High School--Computer Information Systems.
- (5) Secondary Computer Information Systems (Grades 6-12).
- (6) Secondary teacher certificate plus verification of competency to teach computer literacy.
- (7) Technology Applications: Early Childhood-Grade 12.
- (8) Technology Applications: Grades 7-12.

- (9) [(8)] Technology Applications: Grades 8-12 (Grade 8 only).

§231.81. Dance, Middle School 1-3.

An assignment in a departmentalized classroom for Dance, Middle School 1-3, is allowed with the Dance: Grades 8-12 certificate.

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502372

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: August 2, 2015

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



## SUBCHAPTER E. GRADES 9-12

### ASSIGNMENTS

#### DIVISION 4. MATHEMATICS, GRADES 9-12

#### ASSIGNMENTS

#### 19 TAC §231.193, §231.195

The new sections are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed new sections implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.193. Algebraic Reasoning, Grades 9-12.

An assignment for Algebraic Reasoning, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Mathematics.
- (2) Junior High School (Grades 9-10 only) or High School--Mathematics.
- (3) Junior High School (Grades 9-10 only) or High School--Mathematical Science, Composite.
- (4) Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.



(11) Secondary Mathematics (Grades 6-12).

§231.195. Statistics, Grades 9-12.

An assignment for Statistics, Grades 9-12, is allowed with one of the following certificates.

(1) Grades 6-12 or Grades 9-12--Mathematics.

(2) Junior High School (Grades 9-10 only) or High School--Mathematics.

(3) Junior High School (Grades 9-10 only) or High School--Mathematical Science, Composite.

(4) Master Mathematics Teacher (Grades 8-12).

(5) Mathematics: Grades 7-12.

(6) Mathematics: Grades 8-12.

(7) Mathematics/Physical Science/Engineering: Grades 6-12.

(8) Mathematics/Physical Science/Engineering: Grades 8-12.

(9) Physics/Mathematics: Grades 7-12.

(10) Physics/Mathematics: Grades 8-12.

(11) Secondary Mathematics (Grades 6-12).

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502373

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: August 2, 2015

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



## DIVISION 5. SCIENCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.211, §231.213

The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.211. Astronomy, Grades 9-12.

An assignment for Astronomy, Grades 9-12, is allowed with one of the following certificates.

(1) Grades 6-12 or Grades 9-12--Earth Science.

(2) Grades 6-12 or Grades 9-12--Science.

(3) Grades 6-12 or Grades 9-12--Science, Composite.

(4) Junior High School (Grades 9-10 only) or High School--Earth Science.

(5) Junior High School (Grades 9-10 only) or High School--Science.

(6) Junior High School (Grades 9-10 only) or High School--Science, Composite.

(7) Master Science Teacher (Grades 8-12).

(8) Mathematics/Physical Science/Engineering: Grades 6-12.

(9) Mathematics/Physical Science/Engineering: Grades 8-12.

(10) [~~8~~] Physical Science: Grades 6-12.

(11) [~~9~~] Physical Science: Grades 8-12.

(12) [~~10~~] Physics/Mathematics: Grades 7-12.

(13) [~~11~~] Physics/Mathematics: Grades 8-12.

(14) [~~12~~] Science: Grades 7-12.

(15) [~~13~~] Science: Grades 8-12.

(16) [~~14~~] Secondary Earth Science (Grades 6-12).

(17) [~~15~~] Secondary Physics (Grades 6-12).

(18) [~~16~~] Secondary Science (Grades 6-12).

(19) [~~17~~] Secondary Science, Composite (Grades 6-12).

§231.213. Earth and Space Science, Grades 9-12.

An assignment for Earth and Space Science, Grades 9-12, is allowed with one of the following certificates.

(1) Grades 6-12 or Grades 9-12--Earth Science.

(2) Grades 6-12 or Grades 9-12--Science.

(3) Grades 6-12 or Grades 9-12--Science, Composite.

(4) Junior High School (Grades 9-10 only) or High School--Earth Science.

(5) Junior High School (Grades 9-10 only) or High School--Science.

(6) Junior High School (Grades 9-10 only) or High School--Science, Composite.

(7) Master Science Teacher (Grades 8-12).

(8) Mathematics/Physical Science/Engineering: Grades 6-12.

(9) Mathematics/Physical Science/Engineering: Grades 8-12.

(10) Physical Science: Grades 6-12.

(11) Physical Science: Grades 8-12.

(12) [~~8~~] Science: Grades 7-12.

(13) [~~9~~] Science: Grades 8-12.

(14) [~~10~~] Secondary Earth Science (Grades 6-12).

(15) [~~11~~] Secondary Science (Grades 6-12).

(16) [~~12~~] Secondary Science, Composite (Grades 6-12).

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502374

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: August 2, 2015

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



## DIVISION 7. FINE ARTS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.241

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.241. *Art, Music, Theatre, and Dance, Grades 9-12.*

(a) An assignment for Art, Grades 9-12, is allowed with one of the following certificates.

- (1) All-Level Art.
- (2) Art: Early Childhood-Grade 12.
- (3) Grades 6-12 or Grades 9-12--Art.
- (4) Junior High School (Grades 9-10 only) or High School--Art.
- (5) Secondary Art (Grades 6-12).

(b) An assignment for Music, Grades 9-12, is allowed with one of the following certificates.

- (1) All-Level Music.
- (2) Grades 6-12 or Grades 9-12--Music.
- (3) Junior High School (Grades 9-10 only) or High School--Music.
- (4) Music: Early Childhood-Grade 12.
- (5) Secondary Music (Grades 6-12).

(c) An assignment for Theatre, including Musical Theatre, Grades 9-12, is allowed with one of the following certificates.

- (1) All-Level Speech/Drama.
- (2) All-Level Speech Communications/Theatre Arts (Prekindergarten-Grade 12).
- (3) All-Level Theatre Arts (Prekindergarten-Grade 12).

- (4) Grades 6-12 or Grades 9-12--Theatre Arts.
  - (5) Junior High School (Grades 9-10 only) or High School--Drama.
  - (6) Junior High School (Grades 9-10 only) or High School--Speech and Drama.
  - (7) Secondary Theatre Arts (Grades 6-12).
  - (8) Theatre: Early Childhood-Grade 12.
- (d) An assignment for Dance for Fine Arts credit, Grades 9-12, is allowed with one of the following certificates.

- (1) Dance: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Dance.
- (3) Junior High School (Grades 9-10 only) or High School--Dance.
- (4) Secondary Dance (Grades 6-12).

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502375

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: August 2, 2015

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



## DIVISION 15. FINANCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.395

The new section is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed new section implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.395. *Financial Mathematics, Grades 9-12.*

An assignment for Financial Mathematics, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.

- 6-12. (7) Mathematics/Physical Science/Engineering: Grades
- 8-12. (8) Mathematics/Physical Science/Engineering: Grades
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502376

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: August 2, 2015

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



## DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.573, 231.579, 231.581

The amendment and new sections are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment and new sections implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

*§231.573. Principles of Technology, Grades 9-12.*

(a) An [Subject to the requirements in subsection (e) of this section, ~~an~~] assignment for Principles of Technology, Grades 9-12, is allowed with one of the following certificates.

- (1) Master Science Teacher (Grades 8-12).
- 6-12. (2) Mathematics/Physical Science/Engineering: Grades
- 8-12. (3) Mathematics/Physical Science/Engineering: Grades
- (4) Physical Science: Grades 6-12.
- (5) Physical Science: Grades 8-12.
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.

(10) Science, Technology, Engineering, and Mathematics: Grades 6-12.

- (11) Secondary Industrial Arts (Grades 6-12).
- (12) Secondary Industrial Technology (Grades 6-12).
- (13) Secondary Physics (Grades 6-12).
- (14) Secondary Science, Composite (Grades 6-12).
- (15) Technology Education: Grades 6-12.

(b) An [Subject to the requirements in subsection (e) of this section, ~~an~~] assignment for Principles of Technology, Grades 9-12, may also be taught with a vocational agriculture certificate or a trades and industry certificate with verifiable physics applications experience in business and industry, if assigned prior to the 1998-1999 school year. Six semester credit hours of college physics, chemistry, or electricity/electronics may be substituted for the business and industry experience.

~~[(e) All teachers assigned to Principles of Technology shall participate in Texas Education Agency-approved training and have eight semester credit hours in physics prior to teaching this course.]~~

*§231.579. Principles of Engineering, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Principles of Engineering, Grades 9-12, is allowed with one of the following certificates.

- (1) Master Science Teacher (Grades 8-12).
- 6-12. (2) Mathematics/Physical Science/Engineering: Grades
- 8-12. (3) Mathematics/Physical Science/Engineering: Grades
- (4) Physical Science: Grades 6-12.
- (5) Physical Science: Grades 8-12.
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.
- (10) Science, Technology, Engineering, and Mathematics: Grades 6-12.

- (11) Secondary Industrial Arts (Grades 6-12).
- (12) Secondary Industrial Technology (Grades 6-12).
- (13) Secondary Physics (Grades 6-12).
- (14) Secondary Science (Grades 6-12).
- (15) Secondary Science, Composite (Grades 6-12).
- (16) Technology Education: Grades 6-12.

(b) All teachers assigned to Principles of Engineering shall participate in Texas Education Agency-approved training and have eight semester credit hours in physics prior to teaching this course.

*§231.581. Digital Electronics, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Digital Electronics, Grades 9-12, is allowed with one of the following certificates.

- (1) Master Mathematics Teacher (Grades 8-12).

(2) Mathematics/Physical Science/Engineering: Grades 6-12.

(3) Mathematics/Physical Science/Engineering: Grades 8-12.

(4) Physics/Mathematics: Grades 7-12.

(5) Physics/Mathematics: Grades 8-12.

(6) Science, Technology, Engineering, and Mathematics: Grades 6-12.

(7) Secondary Industrial Arts (Grades 6-12).

(8) Secondary Industrial Technology (Grades 6-12).

(9) Secondary Mathematics (Grades 6-12).

(10) Technology Education: Grades 6-12.

(b) All teachers assigned to Digital Electronics shall participate in Texas Education Agency-approved training prior to teaching this course.

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502377

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: August 2, 2015

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



## DIVISION 25. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.591

The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

§231.591. *Transportation, Distribution, and Logistics, Grades 9-12.*

(a) An assignment for Energy, Power, and Transportation Systems; Logistics, Planning, and Management Systems; Principles of Transportation, Distribution, and Logistics; or Transportation Systems Management, Grades 9-12, is allowed with one of the following certificates.

(1) Secondary Industrial Arts (Grades 6-12).

(2) Secondary Industrial Technology (Grades 6-12).

(3) Technology Education: Grades 6-12.

(4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(6) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Transportation, Distribution, and Logistics, Grades 9-12, is allowed with one of the following certificates.

(1) Secondary Industrial Arts (Grades 6-12).

(2) Secondary Industrial Technology (Grades 6-12).

(3) Technology Education: Grades 6-12.

(4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(6) Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Transportation, Distribution, and Logistics, Grades 9-12, has completed appropriate training in the content for this course [state and federal requirements regarding work-based learning and safety].

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502378

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: August 2, 2015

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



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 183. ACUPUNCTURE

##### 22 TAC §183.25

The Texas Medical Board (Board) proposes new §183.25, concerning Inactive Status License.

The new section governs the creation of an inactive status license for acupuncture license holders with a current registration permit and license in good standing.

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 section will be to provide flexibility to acupuncture license holders who relocate from Texas or temporarily cease practicing, by allowing these license holders to place their license in an inac-

tive status, thereby excusing them from paying annual renewal fees on their license. An additional public benefit is reduction of the use of Board resources in processing licensure re-applications for qualified license holders who let their licenses lapse while practicing out of state.

The rule will additionally insure public safety and the safe practice of acupuncture by requiring a showing that inactive status license holders seeking to return to active practice have either practiced acupuncture on a full time basis within either of the two years preceding the application for reactivation, been on the teaching faculty of an acceptable approved acupuncture school, or other evidence of the license holder's ability to safely practice acupuncture.

Mr. Freshour has also determined that for the first five-year period the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect on 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 new section 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. The new section is also authorized by Texas Occupations Code Annotated, §205.101.

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

§183.25. Inactive Status License.

(a) A license holder may have the license holder's license placed on inactive status by applying to the board. A licensed acupuncturist with an inactive status license is excused from paying standard renewal fees on the license and shall instead pay a renewal fee equaling one fourth the price of the standard renewal fee. A license holder with an inactive status license may not practice as an acupuncturist in Texas.

(b) In order for a license holder to be placed on inactive status, the license holder must have a current annual registration permit and have a license in good standing.

(c) A license holder who practices as an acupuncturist in Texas while on inactive status is considered to be practicing without a license.

(d) A license holder may return to active status by applying to the board, paying an application fee equal to an application fee for a acupuncture license, complying with the requirements for license renewal under the Act, providing current certifications of good standing from each other state in which the acupuncturist holds an acupuncture license, and complying with subsection (e) of this section.

(e) An inactive status license holder applying to return to active status shall provide sufficient documentation to the board that the applicant has, on a full-time basis as defined in §183.4(a)(9)(B) of this title (relating to Licensure), actively practiced acupuncture or has been on the active teaching faculty of an acceptable approved acupuncture school, within either of the two years preceding receipt of an application for reactivation. Applicants who do not meet this requirement may, in the discretion of the board, be eligible for the reactivation of

a license subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (4) of this subsection:

(1) completion of specified continuing acupuncture education hours qualifying under §183.20 of this title (relating to Continuing Acupuncture Education);

(2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(3) remedial education; and/or

(4) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as an acupuncturist.

(f) After five years on inactive status, the license holders license shall be canceled as if by request. The acupuncturist may obtain a new license by complying with the requirements and procedures for obtaining an original license. After such cancellation, the acupuncturist may apply for a new license. The acupuncturist shall be required to follow the standard requirements and procedures for obtaining licensure.

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

Filed with the Office of the Secretary of State on June 15, 2015.

TRD-201502272

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: August 2, 2015

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



**22 TAC §183.26**

The Texas Medical Board (Board) proposes new §183.26, concerning Retired License.

The new section governs the creation of a retired license status for acupuncture license holders who meet certain requirements.

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 section will be to provide flexibility for qualifying acupuncture license holders by allowing them to place their license in a retired license status provided they have no pending investigations at the time of the application and that they do not practice in Texas or any other state while in the retired license status.

The rule will additionally insure public safety and the safe practice of acupuncture by requiring retired license holders who seek a return to active practice after being in a retired status for two years or longer to apply to the Licensure Committee of the Acupuncture Board which shall determine if the applicant's request should be granted, denied, or granted subject to conditions necessary to adequately protect the public.

Mr. Freshour has also determined that for the first five-year period the section is in effect, there will be no fiscal implications 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 proposed rule 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 new section 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. The new section is also authorized by Texas Occupations Code Annotated, §205.101.

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

§183.26. Retired License.

(a) The registration renewal fee shall not apply to retired license holders. To be placed in retired status:

(1) the license holder must not be under an investigation or an active order with the board or otherwise have a restricted license; and

(2) the license holder must request in writing on a form prescribed by the board that his or her license be placed on official retired status.

(b) The following restrictions shall apply to license holders whose licenses are on official retired status:

(1) the license holder must not engage in the practice of acupuncture in any state; and

(2) the license holder's license may not be endorsed to any other state.

(c) A license holder may apply to return to active practice as follows:

(1) A retired status license holder who has been in a retired status for less than two years may apply to return to active status by applying to the board, paying an application fee equal to an application fee for a acupuncture license, complying with the requirements for license renewal under the Act, and complying with paragraph (2)(A) - (D) of this subsection, if applicable.

(2) The request of a retired status license holder seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. If the request is granted, it may be granted without conditions or subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to:

(A) completion of specified continuing acupuncture education hours qualifying under §183.20 of this title (relating to Continuing Acupuncture Education);

(B) limitation and/or exclusion of the practice of the applicant to specified activities of practice;

(C) remedial education; and/or

(D) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as an acupuncturist.

(3) The request of a license holder seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to those options provided in paragraph (2)(A) - (D) of this subsection.

(4) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the requesting license holder at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the Licensure Committee, or other designee(s) determined by majority vote of the board.

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

Filed with the Office of the Secretary of State on June 15, 2015.

TRD-201502273

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: August 2, 2015

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

◆ ◆ ◆  
**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 357. REGIONAL WATER PLANNING**

The Texas Water Development Board (board) proposes amendments to 31 TAC §§357.10, 357.50, 357.51, and 357.62 of Chapter 357, relating to Regional Water Planning.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENTS.**

The purpose of the amendments is to change the definitions of interregional and intraregional conflicts and to modify the procedure for resolving those conflicts. The specific provisions being amended and the reasons for the amendments are addressed in more detail below.

**SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.**

The proposed amendment to §357.10 (relating to Definitions and Acronyms) would add to the existing definition of an interregional conflict. In *Texas Water Development Board v. Ward Timber, LTD, et al.*, 411 S.W.3rd 554 (Tex. App.-Eastland 2013), hereinafter *Ward Timber*, the agency had expressed concern that if

its existing definition of interregional conflict was rejected, the agency would be mired down with many small conflicts. The Court suggested that the problem could be solved by amending the board's definition of interregional conflict to also include the fact situation of the *Ward Timber* case. That is what the board is intending to do with the proposed rule.

The board is including in the proposed definition the requirement that the regional water planning group that is intending to raise an interregional conflict must demonstrate to the board that there is at least a potential for a substantial adverse effect on the region. The board's purpose here is to prevent the board and others from devoting valuable and limited resources to attending to numerous conflicts that are *de minimus* in nature or where the protesting region is allowed to raise a conflict without serious consideration of the impacts to their region, or where the impacts, if any, are insubstantial.

The proposed rule would also amend the definition of intraregional conflict. The proposed change is to cover the situation where there are three or more recommended water management strategies and there is only enough water for any two of the strategies. The board notes that this situation of conflicts caused by at least three recommended water management strategies is already covered in the definition of interregional conflicts.

The proposed amendment to §357.50 (relating to Adoption, Submittal, and Approval of Regional Water Plans) proposes numerous changes to this section to shift the resolution of interregional conflicts to the time between when regional water planning groups submit their initially prepared plans (IPPs) and when they submit their final adopted regional water plans.

Subsection 357.50(b) proposes the addition of a requirement that regional water planning groups that have a recommended water management strategy that is located in another region must provide a copy of their IPP to the other regional water planning group when they submit the IPP to the EA. This is to allow the region where the water management strategy is located notice of the water management strategy in order for the regional water planning group to have time to study the strategy and identify any potential interregional conflict they wish to raise to the EA.

Subsection 357.50(d) encompasses the requirement of existing subsection (f) but also proposes that regional water planning groups that object to water management strategies located in their area have a duty to timely raise the objection with the EA. This proposal is to allow the EA and the board to focus on those potential conflicts that the regional water planning groups have self-identified as potential conflicts. This is in keeping with the *Ward Timber* Court's note that each region is tasked to identify interregional conflicts or potential conflicts. The board notes that the regional water planning group that developed the recommended water management strategy has the burden to produce all the required information in the regional water plan and meeting related thresholds, including the requirement to provide the board with quantified reporting of the net quality, reliability and cost of water, environmental factors, and impacts to agricultural resources, §357.34(d)(3), so the burden to produce an analysis of the impacts of the recommended water management strategy is not solely the responsibility of the region that objects to the strategy.

Subsection 357.50(e) is based on the current subsection (h).

Subsection 357.50(f)(1) - (3) is from the current subsection (d). Subsection 357.50(f)(4) is based on the current subsection (g),

but it is reordered here so that interregional conflicts are resolved between the time that IPPs are delivered to the EA and adoption of the regional water plan. The board is of the opinion that this timing of events is consistent with sequence of events laid out in Water Code §16.053(h). Subsection 357.50(f)(5) is proposed to provide a procedure in situations where an interregional conflict has not been resolved by negotiation or board resolution by the time of the statutory deadline for submittal of adopted regional water plans of Water Code §16.053(i). In those situations the regional water planning groups may exclude the relevant recommended water management strategy and all language about the conflict and the board may approve the regional water plan without those portions of the plan that are relevant to the conflict. The interregional conflict will proceed to be resolved by the parties via either negotiation or resolution by the board. The board may then require the regional water plans to be revised or amended to incorporate the resolution.

Proposed subsection 357.50(g) is the current (e) simply reordered in the proposed rule.

Subsection 357.50(h) is based on the current subsection (j), however paragraph (2) has been revised because all conflicts should be resolved, or the portions relevant to an interregional conflict would have been excluded from the plans, at the point where the board is approving the regional water plans.

Proposed subsection 357.50(j) is the current subsection (k) reordered in the proposed rule.

The proposed amendment to §357.51 (relating to Amendments to Regional Water Plans) is proposed to provide a procedure for situations where an interregional conflict does not appear until a regional water planning group proposes an amendment of a water management strategy under §357.51(a) - (d) or a substitution of a water management strategy under §357.51(e). In those cases the proposed amendment would have the parties follow the same procedures for dealing with potential interregional conflicts as at the IPP stage.

The proposed amendment to §357.62 (relating to Interregional Conflicts) provides for recognition that potential interregional conflicts between IPPs may be raised by affected regional water planning groups. The proposed amendment also clarifies the role of regional water planning groups in resolving any potential conflict.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Mr. Christopher Hayden, Director of Budget, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed amendments. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

#### PUBLIC BENEFITS AND COSTS

Mr. Hayden also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no impact to the public.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to define the term "interregional conflict," and provide a procedure for resolving interregional conflicts in the regional water planning process.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather it is also proposed under authority of Water Code §16.053(f). Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to define the term "interregional conflict," and provide a procedure for resolving interregional conflicts in the regional water planning process. The proposed rule would substantially advance this stated purpose by proposing a definition of interregional conflict and amending the process for resolving interregional conflicts to allow for identification of potential interregional conflicts, and the resolution of those conflicts starting shortly after submission of IPPs.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that is mandated to facilitate coordination of interregional conflicts and resolve those conflicts if not resolved by the relevant regional water planning groups, see Water Code §16.053(h)(6).

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires the resolution of interregional conflicts without specifically requiring, burdening or restricting or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### ANNOUNCEMENT OF HEARING

The board will hold a public hearing on this proposal on July 23, 2015 at 1:30 p.m. in Room 170 of the Stephen F. Austin Bldg., 1700 North Congress Ave, Austin, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon. Open discussion and questions to the board will not be permitted during the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Merry Klonower at (512) 463-8165 as far in advance as possible, and no later than five (5) work days prior to the hearing, so that appropriate arrangements can be made.

#### SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted until August 4, 2015 and may be submitted to the Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

#### SUBCHAPTER A. GENERAL INFORMATION

##### 31 TAC §357.10

#### STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §16.053(f), which authorizes the TWDB to provide for procedures for adoption of regional water plans by regional wa-



ter planning groups and for approval of regional water plans by the board, and Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapter 16.

§357.10. *Definitions and Acronyms.*

The following words, used in this chapter, have the following meanings.

(1) - (14) (No change.)

(15) Interregional conflict--An interregional conflict exists when: [more than one regional water plan relies upon the same water source, so that there is not sufficient water available to fully implement both plans and would create an over-allocation of that source.]

(A) more than one regional water plan includes the same source of water supply for identified and quantified recommended water management strategies and there is insufficient water available to implement such water management strategies; or

(B) in the instance of a recommended water management strategy proposed to be supplied from a different regional water planning area, the RWPG with the location of the strategy has studied the impacts of the recommended water management strategy on its economic, agricultural, and natural resources, and demonstrates to the satisfaction of the Board as the sole decision-maker, that there is a potential for a substantial adverse effect on the region as a result of those impacts.

(16) Intraregional conflict--A conflict between two or more identified, quantified, and recommended water management strategies in the same initially prepared plan [adopted regional water plan] that rely upon the same water source, so that there is not sufficient water available to fully implement all [both] water management strategies and thereby creating an over-allocation of that source.

(17) - (30) (No change.)

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502365

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: August 2, 2015

For further information, please call: (512) 475-1673



## SUBCHAPTER E. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL WATER PLANS

### 31 TAC §357.50, §357.51

#### STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §16.053(f), which authorizes the TWDB to provide for procedures for adoption of regional water plans by regional water planning groups and for approval of regional water plans by the board, and Texas Water Code §6.101, which authorizes the

TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapter 16.

§357.50. *Adoption, Submittal, and Approval of Regional Water Plans.*

(a) (No change.)

(b) Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP. The IPP submitted to the EA must be in the electronic and paper format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG. In the instance of a recommended water management strategy proposed to be supplied from a different regional water planning area, the RWPG recommending such strategy shall submit, concurrently with the submission of the IPP to the EA, a copy of the IPP to the RWPG associated with the location of such strategy.

(c) (No change.)

(d) Within 30 days of the submission of IPPs to the EA, the RWPGs shall submit to the EA, and the other affected RWPG, in writing, the identification of potential interregional conflicts by:

(1) identifying the specific recommended water management strategy from another RWPG's IPP;

(2) providing specific information on the impacts of the strategy on economic, agricultural, or natural resources; and

(3) providing a statement of why the RWPG considers there to be an interregional conflict.

(e) The RWPGs shall seek to resolve conflicts with other RWPGs and shall promptly and actively participate in any Board sponsored efforts to resolve interregional conflicts.

(f) The RWPGs shall solicit, and consider the following comments when adopting a RWP:

(1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP;

(2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 90 days after the public hearing is held pursuant to §357.21(d) of this title; and

(3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 60 days after the public hearing is held pursuant to §357.21(d) of this title.

(4) The RWPGs shall modify their IPPs to incorporate negotiated resolutions or Board resolutions of any interregional conflicts into their final adopted RWPs.

(5) In the event that the Board has not resolved an interregional conflict sufficiently early to allow an involved RWPG to modify and adopt its final RWP by the statutory deadline, all RWPGs involved in the conflict shall proceed with adoption of their RWP by excluding the relevant recommended water management strategy and all language relevant to the conflict and include language in the RWP explaining the unresolved interregional conflict and acknowledging that the RWPG may be required to revise or amend its RWP in accordance with a negotiated or Board resolution of an interregional conflict.

(g) Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and amendments to approved RWPs to the EA in conformance with this section.

(1) RWPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) An executive summary that documents key RWP findings and recommendations; and

(C) Summaries of all written and oral comments received pursuant to subsection (d) of this section, with a response by the RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (d) of this section.

(2) RWPGs shall submit regional plans to the EA according to the following schedule:

(A) Initially prepared plans are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the IPP, the RWPGs shall upload the data, metadata and all other relevant digital information supporting the plan to the Board's planning database system. All changes and corrections to this information must be entered into the Board's database prior to submittal of a final adopted plan.

(C) The RWPG will transfer copies of all data, models, and reports generated by the planning process and used in developing the RWP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RWPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RWPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted consistent with the timelines in Texas Water Code §16.053(i).

(E) Once approved by the Board, RWPs will be made available on the Board website.

(h) Upon receipt of a RWP adopted by the RWPG, the Board will consider approval of such plan based on the following criteria:

(1) verified adoption of the RWP by the RWPG; and

(2) verified incorporation of any negotiated resolution or Board resolution of any interregional conflicts, or in the event that an interregional conflict is not yet resolved, verified exclusion of the relevant recommended water management strategy and all language relevant to the conflict.

[(d) The RWPGs shall solicit, and consider the following comments when adopting a RWP:]

[(1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP;]

[(2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 90 days after the public hearing is held pursuant to §357.21(d) of this title; and]

[(3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.21(d)

of this title until at least 60 days after the public hearing is held pursuant to §357.21(d) of this title.]

[(e) Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and amendments to approved RWPs to the EA in conformance with this section.]

[(1) RWPs shall include:]

[(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;]

[(B) An executive summary that documents key RWP findings and recommendations; and]

[(C) Summaries of all written and oral comments received pursuant to subsection (d) of this section, with a response by the RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (d) of this section.]

[(2) RWPGs shall submit regional plans to the EA according to the following schedule:]

[(A) Initially prepared plans are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.]

[(B) Prior to submission of the IPP, the RWPGs shall upload the data, metadata and all other relevant digital information supporting the plan to the Board's planning database system. All changes and corrections to this information must be entered into the Board's database prior to submittal of an adopted plan.]

[(C) The RWPG will transfer copies of all data, models, and reports generated by the planning process and used in developing the RWP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RWPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.]

[(D) Adopted RWPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted consistent with the timelines in Texas Water Code §16.053(i).]

[(E) Once approved by the Board, RWPs will be made available on the Board website.]

[(f) The RWPGs shall submit in a timely manner to the EA information on any known interregional conflict between RWPs.]

[(g) The RWPGs shall modify the RWP to incorporate Board resolutions of interregional conflicts.]

[(h) The RWPGs shall seek to resolve conflicts with other RWPGs and shall participate in any Board sponsored efforts to resolve interregional conflicts.]

(i) (No change.)

(j) Board Adoption of State Water Plan. RWPs approved by the Board pursuant to this chapter shall be incorporated into the state water plan as outlined in §358.4 of this title (relating to Guidelines).

[(j) Upon receipt of a RWP adopted by the RWPG, the Board will consider approval of such plan based on the following criteria:]

{(1) The Board shall verify adoption of the RWP by the RWPG.}

{(2) The Board shall approve the plan only after it considers any information from RWPGs of the existence of an interregional conflict and finds that no interregional conflict exists. The Board shall not consider approval of a RWP unless all RWPs which could contain conflicts have also been submitted to the Board for approval, or the Board determines that such plans are not likely to be submitted.}

{(k) Board Adoption of State Water Plan: RWPs approved by the Board pursuant to this chapter shall be incorporated into the state water plan as outlined in §358.4 of this title (relating to Guidelines).}

§357.51. Amendments to Regional Water Plans.

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

(f) In the instance of a substitution of an alternative water management strategy or a proposed amendment with a recommended water management strategy to be supplied from a different regional water planning area, the RWPG recommending such strategy shall submit, concurrently with the submission of the substitution or proposed amendment to the EA, a copy of the substitution or proposed amendment to the RWPG for the location of such strategy. The provisions of sections 357.50(d), (e), (f), and (h), and 357.62, related to Interregional Conflicts, shall apply to substitution or amendment to the RWP in the same manner as those subdivisions apply to an IPP.

(g) Amending the State Water Plan. Following amendments of RWPs, including substitutions of alternative water management strategies, the Board shall make any necessary amendments to the state water plan as outlined in §358.4 of this title (relating to Guidelines).

{(f) Amending the State Water Plan. Following amendments of RWPs, including substitutions of alternative water management strategies, the Board shall make any necessary amendments to the state water plan as outlined in §358.4 of this title (relating to Guidelines).}

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502366  
Les Trobman  
General Counsel  
Texas Water Development Board  
Earliest possible date of adoption: August 2, 2015  
For further information, please call: (512) 475-1673



SUBCHAPTER F. CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS

31 TAC §357.62

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Water Code §16.053(f), which authorizes the TWDB to provide for procedures for adoption of regional water plans by regional water planning groups and for approval of regional water plans by the board, and Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapter 16.

§357.62. Interregional Conflicts.

(a) In the event a RWPG has asserted an interregional conflict and the Board has determined that there is a potential for a substantial adverse effect on that region, or the Board finds that an interregional conflict exists between IPPs [adopted RWPs], the EA may use the following process:

(1) notify the affected RWPGs of the nature of the interregional conflict;

(2) request affected RWPGs appoint a representative or representatives authorized to negotiate on behalf of the RWPG and notify the EA in writing of the appointment; [assistance in resolving the conflict; and]

(3) request affected RWPGs' assistance in resolving the conflict; and

(4) [(3)] negotiate resolutions of conflicts with RWPGs as determined by the EA.

(b) - (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 June 22, 2015.

TRD-201502367  
Les Trobman  
General Counsel  
Texas Water Development Board  
Earliest possible date of adoption: August 2, 2015  
For further information, please call: (512) 475-1673



CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER A. STATE WATER PLAN DEVELOPMENT

31 TAC §358.3

The Texas Water Development Board (board) proposes an amendment to 31 TAC §358.3, Subchapter A, State Water Plan Development, relating to Guidance Principles, in order to align the rule with Water Code §16.053(h)(7)(C).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENTS.

The purpose of the amendment is to change 31 TAC §358.3, relating to Guidance Principles, paragraph (4) in order align the rule with the scope of the determination required of the board in Water Code §16.053(h)(7)(C).

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

The proposed amendment to §358.3 (relating to Guidance Principles) amends principles in paragraph 4. The current paragraph provides in part that the regional water plans shall provide for conservation of water resources, and protection of the agricultural and natural resources of the regional water planning area, (emphasis added). However, the board is required by Water Code §16.053(h)(7)(C) to only approve a regional water plan after it has determined that the plan is consistent with long-term

protection of the *state's* water resources, agricultural resources and natural resources (emphasis added). The proposed amendment removes the restriction and direction that the regional water plan only look to protecting the enumerated resources of the regional planning area and replaces that with state coverage.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Mr. Christopher Hayden, Director of Budget, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed amendments. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

#### PUBLIC BENEFITS AND COSTS

Mr. Hayden also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no impact to the public.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to align the rule with Water Code §16.053(h)(7)(C).

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract

between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed any standard set by federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather it is also proposed under authority of Water Code §16.053(d) and (e). Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to align the rule with Water Code §16.053(h)(7)(C). The proposed rule would substantially advance this stated purpose by replacing the phrase "regional water planning area" with the term "state."

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that is mandated to approve regional water plans only after it has determined, among other things, that the plan is consistent with long-term protection of the state's water resources, agricultural resources, and natural resources.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires regional water plans to provide for the orderly development, management and conservation of water resources so that sufficient water is available at a reasonable cost to protect the agricultural and natural resources of the state. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### ANNOUNCEMENT OF HEARING

The board will hold a public hearing on this proposal on July 23, 2015, at 1:30 p.m. in Room 170 of the Stephen F. Austin Bldg., 1700 North Congress Ave, Austin, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon. Open discussion and questions to the board will not be permitted during the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Merry Klonower at (512) 463-8165 as far in advance as possible, and no later than five (5) work days prior to the hearing so that appropriate arrangements can be made.

#### SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted until August 4, 2015, and may be submitted to the Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code §16.053(d) and (e), which authorize the TWDB to provide guidance principles to the regional water planning groups. The amendment is also proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapter 16.

#### §358.3. *Guidance Principles.*

Development of the state water plan shall be guided by the following principles.

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

(4) Regional water plans shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions so that sufficient water will be available at a reasonable cost to satisfy a reasonable projected use of water to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the state [regional water planning area].

(5) - (28) (No change.)

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502368

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: August 2, 2015

For further information, please call: (512) 475-1673



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER F. LIMITATION ON APPRAISED VALUE ON CERTAIN QUALIFIED PROPERTIES

34 TAC §§9.1051 - 9.1054, 9.1059, 9.1060

The Comptroller of Public Accounts proposes amendments to §9.1051, concerning definitions; §9.1052, concerning forms; §9.1053, concerning entity requesting agreement to limit appraised value; §9.1054, concerning school district application review and agreement to limit appraised value; §9.1059, concerning annual compliance review; and adds new §9.1060, concerning agreement for limitation on appraised value.

The amendment to §9.1051, concerning Definitions, paragraph (1) will change the definition of agreement to include an explicit reference to the adopt by reference form in §9.1052 of this title for the purpose of clarity. Paragraph (14) changes the definition of non-qualifying job to include the requirement that it be a permanent job, correct a statutory reference and include a reference to the new qualifying job definition. This definition is also changed to delete the requirement that the job did not exist prior to the application review start date. The form agreement will require that non-qualifying jobs meet these requirements after the application review start date so that it conforms to the manner in which the qualifying jobs requirement is implemented. The proposed amendment to the definition of paragraph (21), average weekly wage for manufacturing jobs such that in the event that the wage authorized by subparagraph (A) is not available, then the wage authorized by subparagraph (B) is the wage. A clarifying change is proposed for the definition of average weekly wage for non-qualifying jobs. Additionally, new paragraph (30) is added to define qualifying job that consolidates the requirements of a qualifying job from Tax Code, Chapter 313 into a single definition.

The amendment to §9.1052, concerning Forms, identifies forms by the updated form numbers. The form adopted by reference in subsection (a)(5) is being changed in order to correct a prior numbering error. No changes are proposed to the form. The form adopted by reference in subsection (a)(6), the Texas Economic Development Act Agreement, is being changed to reflect the new form number, update certain statutory references, and provide greater flexibility to the parties to the agreement. The proposed amendment in subsection (b) updates the form website address. The proposed amendment to subsection (c) clarifies that this subsection applies to the form agreement adopted pursuant to this section as well as the application forms adopted pursuant to this section.

The amendment to §9.1053(f), concerning Entity Requesting Agreement to Limit Appraised Value, reduces the number of days for a draft agreement to be submitted to the district and the comptroller prior to the school board meeting at which an application is considered. This amendment is intended to facilitate prompt application review. Subsection (f) is also amended to delete the provisions in the subsection that identify the terms of the agreement. This amendment is proposed in order to consolidate the requirements concerning the terms of the limitation agreements into new §9.1060 of this title and to eliminate redundancy with other sections of this subchapter.

Amendments are also proposed to §9.1054, concerning School District Application Review and Agreement to Limit Appraised Value. The amendments to subsection (g) are to delete the provisions that identify the required terms of a value limitation agreement and move these requirements to new §9.1060 of this title. These amendments are proposed in order to consolidate the requirements concerning the terms of the limitation agreements into new §9.1060 and to eliminate redundancy with other sections in this subchapter. The amendments to subsection (h) are to clarify the requirements for the school district review of

value limitation agreement prior to the start of a deferred qualifying time period in those instances when the school district has approved an agreement that permits the qualifying time period to start more than one year after the date that the application is approved.

The amendments to §9.1059(c), concerning Annual Compliance Review for Qualifying Jobs and Penalties, amend the wage determination for new qualifying job to be the site where the job is located rather than the location of the school district's administrative office. This amendment is intended to provide more accurate data regarding the job creation requirement.

New §9.1060, concerning Agreement for Limitation on Appraised Value, contains the provisions required to be included in an agreement for limitation on appraised value that previously were in other sections in the subchapter. This change to the former provisions is proposed in order to reduce redundancy. Proposed paragraph (8)(D) changes the provisions formerly found in §9.1053(f)(2)(H)(iv) and §9.1054(h)(8)(D) so that paragraph (8)(D) more closely recites the language of the statute in Tax Code, §313.024(d). Proposed paragraph (12)(A) changes the provision formerly found in §9.1053(f)(2)(L)(i) and §9.1054(h)(12)(A) so that new paragraph (12)(A) does not include a reference only to paragraph (8)(A). This change is proposed so that an applicant's failure to comply with any of the requirements identified in paragraph (8) may result in an assessment of liquidated damages as specified in paragraph (12). It is proposed to ensure enforcement of the obligations created in Tax Code, Chapter 313. Proposed paragraph (14) changes the provision formerly found §9.1053(f)(2)(N) and §9.1054(h)(14) to authorize the school board to amend the agreement when the agreement has deferred the start of the qualifying time period for more than one year and the comptroller has revised its certificate for a limitation. This change to the former provisions is proposed to ensure compliance with Tax Code, Chapter 313. Proposed paragraph (16) changes the provision formerly found §9.1053(f)(2)(P) and §9.1054(h)(16) to conform an internal reference necessitated by moving the provision in §9.1060.

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

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

Comments on the amendments and new section may be submitted to Korry Castillo, Director, Data Analysis and Transparency Division, at [Korry.castillo@cpa.texas.gov](mailto:Korry.castillo@cpa.texas.gov) or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments and new section are proposed under Tax Code, §313.027 which authorizes the comptroller to prescribe the form of an agreement for limitation on appraised value, and §313.031 which authorizes the comptroller to adopt rules necessary for the implementation and administration of Tax Code, Chapter 313.

The amendments and new section implement Tax Code, Chapter 313.

§9.1051. *Definitions.*

The following phrases, words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Tax Code, Chapter 313 and not defined in this subchapter shall have the meanings provided by Tax Code, Chapter 313.

(1) Agreement--The written agreement between the governing body of a school district and the approved applicant on the form adopted by reference in §9.1052 of this title (relating to Forms) to implement a limitation on the appraised value for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property, required by Tax Code, §313.027(d).

(2) Applicant--An entity that has applied for a limitation on appraised value for school district maintenance and operations ad valorem property tax purposes on the entity's property as provided by Tax Code, Chapter 313.

(3) Application--An application for limitation of appraised value limitation for school district maintenance and operations ad valorem property tax purposes on an entity's qualified property on the form adopted by reference in §9.1052 of this title [~~(relating to Forms)~~], the schedules attached thereto, and the documentation submitted by an entity for the purpose of obtaining an agreement for a limitation on appraised value from a school district.

(4) Application amendment--Information submitted by an applicant intended to be considered as part of or in support of the application that amends by replacing information that was previously submitted by applicant.

(5) Application supplement--Information submitted by an applicant intended to be considered as part of or in support of the application that has not been previously submitted.

(6) Approved applicant--An applicant whose application has been approved by a school district for a limitation on appraised value agreement according to the provisions of Tax Code, Chapter 313, including any assignees of that applicant.

(7) Application review start date--The later date of either the date on which the school district issues its written notice that an applicant has submitted a completed application or the date on which the comptroller issues its written notice that an applicant has submitted a completed application.

(8) Appraisal district--The county appraisal district that would appraise the property which is the subject of an application.

(9) Appraised value--The value of property as defined by Tax Code, §1.04(8).

(10) Completed application--An application in the form and number and containing all the information required pursuant to §9.1053 of this title (relating to Entity Requesting Agreement to Limit Appraised Value) that has been determined by the school district and the comptroller to include all minimum requirements for consideration.

(11) Comptroller--The Texas Comptroller of Public Accounts or the designated representative of the Texas Comptroller of Public Accounts acting on behalf of the comptroller.

(12) Entity--Any entity upon which a tax is imposed by Tax Code, §171.001 including a combined group as defined by Tax Code, §171.0001(7) or members of a combined group, provided however, an

entity as defined herein does not include a sole proprietorship, partnership or limited liability partnership.

(13) Economic Development and Analysis Division or ED&A--The Economic Development Division and Analysis Division of the comptroller's office, or the division of the comptroller's office responsible for the administration of Tax Code, Chapter 313, acting through the designated division director or a representative thereof.

(14) Non-qualifying job--A permanent position of employment to perform work:

(A) that includes at a minimum the following requirements;

~~/(i) that did not exist on the land prior to the application review start date;]~~

~~(i) [(ii)] that is based on the qualified property;~~

~~(ii) [(iii)] that is in direct support of activity identified in Tax Code, §313.024(b);~~

~~(iii) [(iv)] for at least 1,600 hours a year; [and]~~

~~(iv) [(v)] over which the applicant has significant degree of control of:~~

~~(I) the creation of the job;~~

~~(II) the job description;~~

~~(III) the job characteristics or performance of the job through either a business, contractual or vendor relationship; and~~

(B) is not a qualifying job as that term is defined in Tax Code, §313.021(3) and these rules [~~§313.021(b)~~].

(15) Qualified investment--Property that meets the requirements of Tax Code, §313.021(1).

(16) Qualified property--Land, new building, or new improvement erected or affixed to the land after the application review start date, or eligible tangible personal property first placed in service after the application review start date that:

(A) meets the requirements of Tax Code, §313.021(2), and that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, an advanced clean energy project, renewable energy electric generation, electric power generation using integrated gasification combined cycle technology, nuclear electric power generation, a Texas Priority Project, or a computer center;

(B) is clearly distinguished from any existing property and clearly distinguished from any proposed property that is not a new improvement;

(C) is separate from, and not a component of, any existing property;

(D) if buildings or improvements, did not exist before the application review start date or if tangible personal property, was first placed in service after the application review start date;

(E) is not used to renovate, refurbish, upgrade, maintain, modify, improve, or functionally replace existing buildings or existing improvements;

(F) does not replace or modify existing buildings other than expansion of an existing building; and

(G) is not used solely for the transportation of product prior to the commencement, or subsequent to the completion, of an ap-

plicable qualifying activity described in subparagraph (A) of this paragraph.

(17) School district--A school district that has received an application for a limitation on appraised value pursuant to Tax Code, Chapter 313 or the designated representative of the school district acting on behalf of the school district.

(18) SOAH--State Office of Administrative Hearings.

(19) Substantive document--A document or other information or data in electronic media determined by the comptroller to substantially involve or include information or data significant to an application, the evaluation or consideration of an application, or the agreement or implementation of an agreement for limitation of appraised value pursuant to Tax Code, Chapter 313. The term includes, but is not limited to, any application requesting a limitation on appraised value and any amendments or supplements, any economic impact evaluation made in connection with an application, any agreement between applicant and the school district and any subsequent amendments or assignments, any school district written finding or report filed with the comptroller as required under this subchapter, and any completed Annual Eligibility Report (Form 50-772A) submitted to the comptroller.

(20) Agreement holder--An entity that has executed an agreement with a school district.

(21) Average weekly wage for manufacturing jobs--Either the average weekly wage:

(A) for all jobs primarily engaged in activities described in Sectors 31 - 33 of the 2007 North American Industry Classification System in a county as identified by the Texas Workforce Commission's Quarterly Employment and Wages (QCEW) webpage at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>; or

(B) for all manufacturing jobs or if the information for subparagraph (A) of this paragraph is not available, as determined by data published annually by the Texas Workforce Commission for the purposes of Tax Code, Chapter 313 for each Council of Government Region, based on Bureau of Labor Statistics, Texas Occupational Employment and Wages (OES) data, as it is posted at <http://www.tracer2.com/admin/uploadedPublications/COGWages.pdf>.

(22) Average weekly wage for non-qualifying jobs--The average weekly wage as identified by the Texas Workforce Commission Quarterly Employment and Wages (QCEW) average weekly wages for all private industries for the most recent four quarterly periods for which data is available at the time that an application is deemed complete, as it is posted at <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Industry>.

(23) First placed in service--The first use of the property by the agreement holder.

(24) New improvement--A building, structure, or fixture that, after the application review start date:

(A) is a discrete unit of property erected on or affixed to land eligible to be qualified property; and

(B) is not erected or affixed as part of maintenance, renovation, refurbishment, improvement, modification, or upgrade of existing property, nor is newly added or proposed to be added property functionally replacing existing property, provided however that a proposed improvement may be considered a new improvement if it is an addition to an existing building that will contain new tangible personal property that did not exist before the application review start date.

(25) Per capita income--Per capita money income in the past 12 months as determined by the United States Census Bureau and reported at its website <http://quickfacts.census.gov/qfd/states/48000.html>.

(26) Strategic investment area--An area that is:

(A) a county within this state with unemployment above the state average and per capita income below the state average;

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or

(C) a defense economic readjustment zone designated under Government Code, Chapter 2310.

(27) Texas Economic Development Act Agreement--The form, adopted by reference in §9.1052 of this title, which provides a template for the terms of an agreement to implement a limitation on appraised value on property within a school district and that has the title Agreement For Limitation On Appraised Value Of Property For School District Maintenance And Operations Taxes.

(28) Texas Priority Project--A project on which the applicant commits to place in service qualified investment of more than \$1 billion during the qualifying time period, based on the comptroller review of the application submitted by the school district.

(29) Unemployment--The most recent calendar year unemployment rate, not seasonally adjusted, as determined by the Labor Market & Career Information Department (LMCI) of the Texas Workforce Commission and reported at its website <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?table-Name=Labforce>.

(30) Qualifying job--A permanent position of employment that includes at a minimum the following requirements:

(A) provides work for at least 1600 hours a year;

(B) is in direct support of activity identified in Tax Code, §313.024(b);

(C) is based on the qualified property;

(D) is a job over which the applicant has significant degree of control of:

(i) the creation of the job;

(ii) the job description;

(iii) the job characteristics or performance of the job through either a business, contractual or vendor relationship;

(E) is covered by a group health benefit plan for which the applicant offers to pay at least 80% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage;

(F) pays at least 110% of the county average weekly wage for manufacturing jobs in the county where the job is located;

(G) that has not been transferred from another part of the state; and

(H) that has not been created to replace a previous employee.

§9.1052. *Forms.*

(a) The comptroller adopts by reference the following forms:

(1) Application for Appraised Value Limitation on Qualified Property (Form 50-296A);

(2) Annual Eligibility Report (Form 50-772A);

(3) Biennial Progress Report for Texas Economic Development Act (Form 50-773A);

(4) Job Creation Compliance Report (Form 50-825);

(5) Biennial School District Cost Data Request (CDR) (Form ~~50-827~~ [50-287]); and

(6) Texas Economic Development Act Agreement (Form ~~50-826~~ [50-286]).

(b) Copies of the forms are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The forms may be viewed or downloaded from the comptroller's web site, at [http://www.texasahead.org/tax\\_programs/chapter313/legal.php](http://www.texasahead.org/tax_programs/chapter313/legal.php) [<http://www.window.state.tx.us/taxinfo/proptax/hb1200/index.html>]. Copies may also be requested by calling our toll-free number, (800) 252-9121.

(c) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application or agreement form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

§9.1053. *Entity Requesting Agreement to Limit Appraised Value.*

(a) Initial application contents. To request a limitation on appraised value for school district maintenance and operations ad valorem tax purposes pursuant to Tax Code, Chapter 313, an applicant shall file a completed application with the school district in which the qualified property will be located.

(1) A completed application shall consist of, at a minimum, the following items:

(A) the comptroller's current application form and Schedules A1, A2, B, C and D attached to the application form with all information boxes filled in with the information on which applicant intends to rely including but not limited to:

(i) a specific and detailed description of the proposed qualified property to which the appraised value limitation will apply sufficient to clearly distinguish the subject property from property to which the limitation does not apply and to establish that the property meets the criteria of qualified property pursuant to these rules and Tax Code, §313.021(2);

(ii) a specific and detailed description of the investment described in Tax Code, §313.021(1) that is proposed to be made in the property subject to the appraised value limitation and sound, good faith estimates of the dollar value of intended investment sufficient to establish that the investment meets minimum criteria for qualified investment pursuant to Tax Code, §313.023 or §313.053 if applicable, during the proposed qualifying time period;

(iii) if the land upon which the qualified property will be located contains existing improvements or tangible personal property, a specific and detailed description of the tangible personal property, buildings, or permanent, non-removable building components (including any affixed to or incorporated into real property) on the land that is sufficient to distinguish existing property from the proposed new improvements and any proposed property that is not new improvements which may include maps, surveys, appraisal district values and parcel numbers, inventory lists, property lists, model and serial numbers of existing property, or other information of sufficient detail and description to locate all existing property within the boundaries of the real property which is subject to the agreement;



provided however, that the date of appraisal shall be within 15 days of the date the application is received by the school district;

(iv) the total number of any jobs related to construction or operation of the facility that the applicant chooses to disclose for the purpose of calculating the economic impact of the project;

(v) the total number of qualifying jobs the applicant commits to create and maintain during the full term of the agreement and a schedule which identifies the number of qualifying jobs created and maintained in each year of the agreement;

(vi) the wages, salaries, and benefits applicant commits to provide for each qualifying job;

(vii) the total number of non-qualifying jobs the applicant estimates it will create and maintain during the full term of the agreement and a schedule which identifies the number of non-qualifying jobs created and maintained in each year of the agreement;

(viii) the average wages the applicant estimates it will provide for non-qualifying jobs;

(ix) a statement:

(I) that for the purposes of this statement, "payments to the school district" include any and all payments or transfers of things of value made to the school district or to any person or persons in any form if such payment or transfer of thing of value being provided is in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value; and

(II) as to whether:

(-a-) the amount of any and all payments or transfers made to the school district may result in payments that are or are not in compliance with Tax Code, §313.027(i); or

(-b-) as to whether the method for determining the amount may result in payments to the school district that are or are not in compliance with Tax Code, §313.027(i); and

(x) a description of the real property on which the intended investment will be made, identified additionally by the county appraisal district parcel number;

(B) such other written documents containing information on which applicant relies to qualify for and obtain a limitation on appraised value pursuant to Tax Code, Chapter 313;

(C) such other written documents containing information reasonably requested by either the school district or the comptroller which shall be provided within 20 days of the date of the request, provided however the applicant may request up to 10 additional days to provide the requested information;

(D) information identifying the applicant, and if applicant is a combined group, identifying each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement, by:

(i) official name, street address, city, county, state and mailing address, if different from the street address, of the official place of business of the applicant and, if the applicant is a combined group, of each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement;

(ii) designation of an authorized representative for the applicant and, if the applicant is a combined group, for each such combined group's members that intend to own a direct interest in the property subject to the proposed agreement; and

(iii) for each authorized representative, and if the applicant is a combined group for each such combined group's members

that intend to own a direct interest in the property subject to the proposed agreement, provide telephone number, email address, street address, city, county, state, and mailing address if different from the street address;

(E) the signature of applicant's authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application to the best knowledge and belief of applicant and its representative(s);

(F) the total application fee required by the school district with which the application will be filed;

(G) a statement as to whether or not the project is an expansion of an existing operation on the land which will become qualified property, and if so, a description of the nature of the existing operation, and the nature of the expansion, including an explanation of how the expansion affects or interacts with current operations;

(H) a statement specifying the beginning date of the limitation period, which must be January 1 of the first tax year that begins after one of the following:

(i) the date of the completed application;

(ii) the date of the end of the qualifying time period, provided however that such date will begin no later than the beginning of the limitation period; or

(iii) the date commercial operations are to begin at the site of the project;

(I) a statement regarding the location and nature of other facilities that the applicant operates in the state, and a detailed description of any such facilities that will provide inputs to or use outputs from the project that is the subject of the application;

(J) a detailed description of any state and local incentives for which the applicant intends to apply; and

(K) any information that the applicant requests the comptroller to consider in making the determination under Tax Code, §313.026(c)(2) that the limitation on appraised value is a determining factor in the applicant's decision to invest capital and construct the project in the state, which may include:

(i) other locations not in Texas that the applicant considered or is considering for the project;

(ii) capital investment and return on investment information in comparison with other alternative investment opportunities; or

(iii) information related to the applicant's inputs, transportation and markets.

(2) The completed application contents shall be provided in the following formats:

(A) one original hard copy of the completed application in a three ring binder with tabs separating each section of the documents submitted; and

(B) an electronically digitized copy, formatted in searchable pdf format or other format acceptable to the comptroller, certified by the applicant as containing the identical information, maps, and schedules as the original hard copy. The digitized copy shall include:

(i) schedules A1, A2, B, C, and D in Microsoft Excel format; and

(ii) high-resolution maps and graphics (300 dpi or higher).

(3) The application shall be submitted in any manner acceptable to the comptroller.

(b) Optional application requests. An applicant may include in an application:

(1) a request that the school district waive the requirement of Tax Code, §313.021(2)(A)(iv)(b) or §313.051(b), whichever is applicable, to create new jobs. In order for a completed application to include a job waiver request, applicant shall submit:

(A) a specific request to waive the job requirement of the applicable Tax Code section included with the application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) separated and clearly marked within the application materials, documentation on which applicant intends to rely that demonstrates that the applicable jobs creation requirement of the applicable Tax Code section exceeds the industry standard for the number of employees reasonably necessary for the operation of the facility of applicant that is described in the application; or

(2) a request to begin the qualifying time period on a date that is after the date that the application is approved. In order for a completed application to include a qualifying time period deferral request, applicant shall submit:

(A) specific information identifying the requested qualifying time period within an application that includes all the minimum requirements set forth in subsection (a) of this section; and

(B) all relevant economic information that is related to the impact of the investment during the proposed qualifying time period, the proposed limitation period, and a period of time after the limitation period considered appropriate by the comptroller.

(c) Application changes. At the request of the school district or the comptroller, or with the prior approval of the school district and the comptroller, applicant may submit an application amendment or application supplement at any time after the submission of the initial application. In order to be considered as part of the application, the application amendment or supplement shall:

(1) be submitted in the same form or schedule and manner as the information was initially submitted or should have been initially submitted;

(2) include a date for the submission and a sequential number identifying the number of submissions made by applicant;

(3) have the signature of the authorized representative(s) by which applicant confirms and attests to the truth and accuracy of the information submitted in the application amendment or supplement, as applicable, to the best knowledge and belief of applicant and its representative(s); and

(4) be submitted before the 120th day after the application was accepted by the school district or within another time period as provided in writing by the comptroller.

(d) Authorized representative(s). The person(s) identified in the application as applicant's authorized representative(s) shall serve as the person(s) to whom all correspondence and notifications from the school district and comptroller shall be sent. Notwithstanding subsection (c) of this section, applicant may change its authorized representative(s) if applicant submits to the school district and the comptroller

a letter that provides the name of the new authorized representative(s), street and mailing address, telephone number, and official title, if any.

(e) Information confidentiality. At the time that applicant submits its application, application amendment, or application supplement, applicant may request that all or parts of such document not be posted on the internet and not otherwise be publicly released. In order to make such request, applicant shall:

(1) submit a written request that:

(A) specifically lists each document or portion of document and each entry in any form prescribed by the comptroller that applicant contends is confidential; and

(B) identifies specific detailed reasons stating why applicant believes each item listed should be considered confidential and identifies any relevant legal authority in support of the request;

(2) segregate the documents which are subject to the request from the other documents submitted with the application, application amendment, or application supplement that are not subject to the request; and

(3) adequately designate the documents subject to the request as "confidential."

(f) Continued eligibility for value limitation. In order to obtain and continue to receive a limitation on appraised value pursuant to Tax Code, Chapter 313, an applicant shall:

(1) have a completed application approved by the governing body of the school district in compliance with §9.1054(f) of this title (relating to School District Application Review and Agreement to Limit Appraised Value);

(2) at least 20 [30] days prior to the meeting at which the governing body of the school district is scheduled to consider the application, provide to the school district and the comptroller a Texas Economic Development Act Agreement with terms acceptable to the applicant that includes at a minimum the provisions required by §9.1060 of this title (relating to Agreement for Limitation on Appraised Value);[:]

~~[(A) all Texas Taxpayer Identification Numbers assigned by the comptroller to the approved applicant executing the agreement and all Texas Taxpayer Identification Numbers of its reporting entity, which shall be the same numbers listed on the application and, if the approved applicant is comprised of members of a combined group, all Texas Taxpayer Identification Numbers for each such combined group's members that own a direct interest in the property subject to the proposed agreement;]~~

~~[(B) a stipulation that the agreement is executed on the basis that the application is complete and accurately represents all material representations, information, and facts and incorporates the application, all the attachments thereto, and any application supplement or application amendment as part of the agreement as if set forth fully in the agreement;]~~

~~[(C) a condition that upon the written determination of the governing body of the school district that the application is either incomplete or inaccurate as to any material representation, information, or fact, the agreement shall be invalid and void except for the enforcement of the provisions required by subparagraph (L) of this paragraph;]~~

~~[(D) provisions required for an agreement listed in Tax Code, Chapter 313 with particular reference to Tax Code, §313.027(e), (f), and (i);]~~

{(E) a provision that identifies the qualifying time period that shall be consistent with the qualifying time period requested in the application;}

{(F) a provision that identifies the beginning of the limitation period that is consistent with the limitation period requested in the application;}

{(G) a condition that before the approved applicant may obtain the limitation on the appraised value identified in the agreement, the approved applicant shall make the qualified investment, as defined in Tax Code, §313.021(1), at least in the amounts required in Tax Code, §313.022, or §313.052 if applicable, within the qualifying time period specified in the agreement;}

{(H) a provision that the approved applicant is required to:}

{(i) create at least the number of new qualifying jobs required by Tax Code, Chapter 313 during the qualifying time period;}

{(ii) create at least the number of qualifying jobs to which the applicant committed in the application during the qualifying time period;}

{(iii) maintain at least the number of qualifying jobs committed in the application from the time the jobs are created until at least the end of the fifth year following the expiration of the limitation on appraised value provided by the agreement; and}

{(iv) for all jobs that are non-qualifying jobs, pay an average weekly wage that exceeds the average weekly wage for non-qualifying jobs in the county where the non-qualifying jobs are located;}

{(I) a provision that identifies the limitation on the appraised value of the qualified property of the approved applicant consistent with Tax Code, §313.027, or if applicable Tax Code, §313.054;}

{(J) a provision that separately states and explicitly identifies the amount, or the method for determining the amount, of any and all payments or transfers made to the school district or to any person or persons in any form if the payment or transfer of thing of value is provided in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value made pursuant to Tax Code, §§313.027(f)(1), 313.027(f)(2), or 313.027(i);}

{(K) a provision by which the approved applicant is required to submit to the school district any information as thereafter may be reasonably requested by the school district or the comptroller in order to evaluate the progress of the agreement or administer and implement Tax Code, Chapter 313 and this subchapter;}

{(L) a provision that:}

{(i) in the event that the approved applicant fails in any year to comply with the stipulation, condition, provision, or term of the agreement identified in subparagraphs (C), (D), (H)(i), or (J) of this paragraph, the approved applicant is assessed as liquidated damages an amount equal to the amount computed by subtracting from the market value of the property for the tax year in which the approved applicant failed to comply, the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district;}

{(ii) deems the penalty delinquent if it is not paid on or before February 1 of the following tax year; and}

{(iii) applies Tax Code, §33.01 to the delinquent penalty in the manner that section applies to delinquent taxes;}

{(M) a provision that the approved applicant shall comply with the conditions included in the certificate for a limitation issued by the comptroller;}

{(N) for agreements in which the governing body of the school district approved a deferral of the start of the qualifying time period, and in which the qualifying time period starts more than one year after the date that the application is approved, provisions that:}

{(i) require the approved applicant to provide an application amendment or supplement to the school district and comptroller;}

{(i) that identifies any changes in the information that was provided in the application that was approved by the school district and as considered by the comptroller;}

{(ii) no earlier than 180 days prior to the start of the qualifying time period; and}

{(iii) no later than 90 days prior to the start of the qualifying time period;}

{(ii) require the approved applicant to comply with a written request from the school district or the comptroller to provide additional information necessary to evaluate the economic impact analysis for the conditions prior to the start of the qualifying time period; and}

{(iii) authorize the governing body of the school district to terminate the agreement if the comptroller withdraws its certificate for a limitation based on the revised application;}

{(O) a provision that within 60 days from the date commercial operations begin, the approved applicant shall provide to the school district, the comptroller, and the appraisal district a specific and detailed description of the land, tangible personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such qualified property within the boundaries of the land which is subject to the agreement if the final description is different than the description provided in the application or any supplemental application information;}

{(P) a provision that in order to amend or in any manner modify the application, agreement, or notice as provided by subparagraph (O) of this paragraph, the following shall occur:}

{(i) the approved applicant shall submit to the school district and the comptroller;}

{(i) a written request to amend the application and the limitation agreement which shall specify the changes the applicant requests;}

{(ii) any changes to the information that was provided in the application that was approved by the school district and considered by the comptroller; and}

{(iii) any additional information requested by the school district or the comptroller necessary to evaluate the amendment or modification;}

{(ii) the comptroller shall review the request and any additional information and provide a revised comptroller certificate for a limitation within 90 days of receiving the revised application or the request to amend the application is denied;}

{(iii) in accordance with the procedure identified in §9.1054(h) of this title, the governing body shall approve or disapprove the request before the expiration of 120 days after the request is filed;}

~~[(Q) a provision that the failure of the approved applicant to either pay a penalty assessed or provide and implement a plan to remedy a non-compliance as required by the comptroller pursuant to §9.1059 of this title (relating to Annual Compliance Review for Qualifying Jobs and Penalties) is a material breach of the agreement;]~~

~~[(R) a provision that the agreement holder may assign its interest in the agreement only if such assignment is approved according to the provisions of subparagraph (P) of this paragraph;]~~

~~[(S) for a Texas Priority Project, a provision that in the event that the approved applicant fails to place in service qualified investment of at least \$1 billion during the qualifying time period the agreement terminates and the applicant is subject to any damages or penalties required by the agreement, the comptroller's rules, or the Act; and]~~

~~[(T) any other provision negotiated between the applicant and the school district that does not conflict or impair the application or implementation of any stipulation, provision, or term required by this paragraph, this subchapter or Tax Code, Chapter 313;]~~

(3) if the applicant includes a combined group or members of the combined group, have the agreement executed by the authorized representative of each member of the combined group that owns a direct interest in property subject to the proposed agreement by which such members are jointly and severally liable for the performance of the stipulations, provisions, terms, and conditions of the agreement;

(4) comply with all stipulations, provisions, terms, and conditions of the agreement for a limitation on appraised value executed with the school district, this subchapter, and Tax Code, Chapter 313;

(5) be and remain in good standing under the laws of this state and maintain legal status as an entity, as defined in this subchapter;

(6) owe no delinquent taxes to the state;

(7) maintain eligibility for limitation on appraised value pursuant to Tax Code, Chapter 313; and

(8) provide to the school district, the comptroller, and the appraisal district any change to information provided in the application, including but not limited to:

(A) changes of the authorized representative(s);

(B) changes to the location and contact information for the approved applicant including all members of the combined group participating in the limitation agreement;

(C) copies of any valid assignments of the agreement and contact information for authorized representative(s) of any assignees.

*§9.1054. School District Application Review and Agreement to Limit Appraised Value.*

(a) Application fee. Prior to accepting an application for an agreement for limitation on appraised value pursuant to Tax Code, Chapter 313, Subchapter B, the governing body of a school district by official action shall establish a reasonable nonrefundable application fee to be paid by an applicant who applies to the school district for a limitation on the appraised value of applicant's property under such subchapter. The amount of the fee shall not exceed the estimated cost to the district of processing and acting on an application. The total fee shall be paid at time the application is submitted to the school district. Any fees not accompanying the original application shall be considered supplemental payments.

(b) Initial review. If a school district receives a completed application, amended application, or supplemental application for property tax limitation within its boundaries, the school district shall submit to the comptroller, not later than 7 days after receiving it, a copy of the following documents:

(1) the application;

(2) an economic analysis, if any;

(3) application amendment;

(4) application supplement; and

(5) proof of payment of the total filing fee required by the school district.

(c) Acting on a completed application. If the governing body of the school district by official action elects to consider an application and determines that the application received is a completed application, the school district shall:

(1) provide written notice to the applicant and to the comptroller, with a copy to the appraisal district, that the school district has received and will be considering a completed application. The notice shall include:

(A) the date on which the application was received;

(B) the date on which the governing body elected to consider the application; and

(C) the date on which the school district determined that applicant has submitted a completed application;

(2) at the time the school district provides notice of a completed application, deliver to the comptroller:

(A) a copy of the completed application including all material required by §9.1053(a) and, if applicable (b), of this title (relating to Entity Requesting Agreement to Limit Appraised Value); and

(B) a request to the comptroller to provide an economic impact evaluation;

(3) if the school district maintains a generally accessible Internet web site, provide a clear and conspicuous link on its web site to the Internet web site maintained by the comptroller where substantive documents for the value limitation application for such school district are posted;

(4) on request of the comptroller, provide such written documents containing information requested by the comptroller as necessary for the consideration of a limitation on appraised value pursuant to Tax Code, Chapter 313 within 20 days of the date of the request; and

(5) not later than 151 days after the application review start date, present to the governing body of the school district for its consideration:

(A) the completed application that has been submitted by applicant;

(B) the economic impact analysis submitted by the comptroller;

(C) the comptroller certificate for a limitation or written explanation for not issuing a certificate; and

(D) a limitation agreement that includes all stipulations, provisions, terms, and conditions required by subsection (g) of this section that is acceptable to the applicant.

(d) Extending time period for action. The governing body of the school district may extend the time period to approve a completed application required by subsection (c)(5) of this section only if:

(1) either:

(A) an economic impact analysis has not been submitted to the school district by the comptroller; or

(B) by agreement with applicant; and

(2) notice of the extension is provided to the comptroller within 7 days of the decision to provide the extension.

(e) Application changes after the notice of completed application. If a school district receives an amended application or a supplemental application from an applicant after the school district has prepared or sent written notice that the applicant has submitted a completed application, the school district shall either:

(1) reject the amended application, supplemental application, or application, in whole or in part, and discontinue consideration of any submission by applicant;

(2) with the written concurrence of the comptroller, consider the completed application, as amended or supplemented, before the 151st day from the application review start date; or

(3) review the documents submitted by applicant, issue an amended written notice of a completed application, and present the amended application to the governing body of the school district in the manner and time period authorized by subsection (c)(5) of this section.

(f) Application with comptroller certificate for a limitation. When presented a completed application pursuant to subsection (c)(5) of this section for which the comptroller has submitted a comptroller certificate for a limitation, the governing body of the school district shall either:

(1) by majority vote adopt a written resolution approving the application which shall include:

(A) written findings:

(i) as to each criterion listed in §9.1055(d)(3)(B) - (D) of this title (relating to Comptroller Application Review and Agreement to Limit Appraised Value);

(ii) as to the criteria required by Tax Code, §313.025(f-1) if applicable;

(iii) that the information in the application is true and correct; and

(iv) that applicant is eligible for the limitation on the appraised value of the entity's qualified property;

(B) a determination that granting the application is in the best interest of the school district and this state; and

(C) designate and direct a representative of the governing body of the school district to execute the agreement for property tax limitation presented by the approved applicant that complies with this subchapter and Tax Code, Chapter 313;

(2) by majority vote disapprove the application; or

(3) take no official action and the application shall be considered disapproved on the 151st day after the application review start date.

(g) Agreement for limitation on appraised value. Pursuant to the provisions of Tax Code, Chapter 313 and this subchapter, in order to implement a limitation on the appraised value for school district

maintenance and operation tax purposes on the approved applicant's qualified property that has been approved by the governing body of the school district, at the time of the approval of the application, the authorized representative of the school district and the approved applicant shall execute a Texas Economic Development Act Agreement with terms that at a minimum include the provisions required by §9.1060 of this title (relating to Agreement for Limitation on Appraised Value).[-]

[(1) all Texas Taxpayer Identification Numbers assigned by the comptroller to the approved applicant executing the agreement and all Texas Taxpayer Identification Numbers of its reporting entity, which shall be the same numbers listed on the application and; if the approved applicant is comprised of members of a combined group, all Texas Taxpayer Identification Numbers for each such combined group's members that own a direct interest in the property subject to the proposed agreement;]

[(2) a stipulation that the agreement is executed on the basis that the application is complete and accurately represents all material representations, information, and facts and incorporates the application; all the attachments thereto, and any application supplement or application amendment as part of the agreement as if set forth fully in the agreement;]

[(3) a condition that upon the written determination of the governing body of the school district that the application is either incomplete or inaccurate as to any material representation, information, or fact, the agreement shall be invalid and void except for the enforcement of the provisions required by paragraph (12) of this subsection;]

[(4) provisions required for an agreement listed in Tax Code, Chapter 313 with particular reference to Tax Code, §313.027(e), (f), and (i);]

[(5) a provision that identifies the qualifying time period that shall be consistent with the qualifying time period requested in the application;]

[(6) a provision that identifies the beginning of the limitation period that is consistent with the limitation period requested in the application;]

[(7) a condition that before the appraised value of the qualified property of the approved applicant may obtain the limitation on the appraised value identified in the agreement, the approved applicant shall make the qualified investment, as defined in Tax Code, §313.021(1), at least in the amounts required in Tax Code, §313.022, or §313.052 if applicable, within the qualifying time period specified in the agreement;]

[(8) a provision that the approved applicant is required to:]

[(A) create at least the number of new qualifying jobs required by Tax Code, Chapter 313 during the qualifying time period;]

[(B) create at least the number of qualifying jobs to which the applicant committed in the application during the qualifying time period;]

[(C) maintain at least the number of qualifying jobs committed in the application from the time they are created until at least the end of the fifth year following the expiration of the limitation on appraised value provided by the agreement; and]

[(D) for all jobs that are non-qualifying jobs, pay an average weekly wage that exceeds the average weekly wage for non-qualifying jobs in the county where the non-qualifying jobs are located;]

[(9) a provision that identifies the limitation on the appraised value of the qualified property of the approved applicant

consistent with Tax Code, §313.027, or if applicable Tax Code, §313.054;]

[(10) a provision that separately states and explicitly identifies the amount, or the method for determining the amount, of any and all payments or transfers made to the school district or to any person or persons in any form if the payment or transfer of thing of value is provided in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value made pursuant to Tax Code, §§313.027(f)(1), 313.027(f)(2), or 313.027(i);]

[(11) a provision by which the approved applicant is required to submit to the school district any information as thereafter may be reasonably requested by the school district or the comptroller in order to evaluate the progress of the agreement or administer and implement Tax Code, Chapter 313 and this subchapter;]

[(12) a provision that:]

[(A) in the event that the approved applicant fails in any year to comply with the stipulation, provision, term, or condition of the agreement identified in paragraphs (3), (4), (8)(A), or (10) of this subsection, the approved applicant is assessed as liquidated damages an amount equal to the amount computed by subtracting from the market value of the property for the tax year in which the approved applicant failed to comply, the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district;]

[(B) deems the penalty delinquent if it is not paid on or before February 1 of the following tax year; and]

[(C) applies Tax Code, §33.01 to the delinquent penalty in the manner that section applies to delinquent taxes;]

[(13) a provision that the approved applicant shall comply with the conditions included in the certification for a limitation issued by the comptroller;]

[(14) for agreements in which the governing body of the school district approved a deferral of the start of the qualifying time period; and in which the qualifying time period starts more than one year after the date that the application is approved, provisions that:]

[(A) require the approved applicant to provide an application amendment or supplement to the school district and comptroller;]

[(i) that identifies any changes in the information that was provided in the application that was approved by the school district and as considered by the comptroller;]

[(ii) no earlier than 180 days prior to the start of the qualifying time period; and]

[(iii) no later than 90 days prior to the start of the qualifying time period;]

[(B) require the approved applicant to comply with a written request from the school district or comptroller to provide additional information necessary to evaluate the economic impact analysis for the conditions prior to the start of the qualifying time period; and]

[(C) authorize the governing body of the school district to terminate the agreement if the comptroller withdraws its certificate for a limitation based on the revised application;]

[(15) a provision that within 60 days from the date commercial operations begin, the approved applicant shall provide to the school district, the comptroller, and the appraisal district a specific and detailed description of the land, tangible personal property, buildings, or permanent, nonremovable building components (including any af-

fixed to or incorporated into real property) to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such qualified property within the boundaries of the land which is subject to the agreement if the final description is different than the description provided in the application or any supplemental application information;]

[(16) a provision that in order to amend or in any manner modify the application, agreement, or notice as provided by paragraph (14) of this subsection, the following shall occur:]

[(A) the approved applicant shall submit to the school district and the comptroller;]

[(i) a written request to amend the application and limitation agreement which shall specify the changes the applicant requests;]

[(ii) any changes to the information that was provided in the application that was approved by the school district and considered by the comptroller; and]

[(iii) any additional information requested by the school district or the comptroller necessary to evaluate the amendment or modification;]

[(B) the comptroller shall review the request and any additional information and provide a revised comptroller certificate for a limitation within 90 days of receiving the revised application or the request to amend the application is denied;]

[(C) in accord with the procedure identified in subsection (h) of this section, the governing body of the school district shall approve or disapprove the request before the expiration of 120 days after the request is filed;]

[(17) a provision that the failure of the approved applicant to either pay a penalty assessed or provide and implement a plan to remedy a non-compliance as required by the comptroller pursuant to §9.1059 of this title (relating to Annual Compliance Review for Qualifying Jobs and Penalties) is a material breach of the agreement;]

[(18) a provision that the agreement holder may assign its interest in the agreement only if such assignment is approved according to the provisions of paragraph (16) of this subsection;]

[(19) for a Texas Priority Project, a provision that in the event that the approved applicant fails to place in service qualified investment of at least \$1 billion during the qualifying time period the agreement terminates and the applicant is subject to any damages or penalties required by the agreement, the comptroller's rules, or the Act; and]

[(20) any other provision negotiated between the applicant and the school district that does not conflict or impair the application or implementation of any stipulation, provision, term, or condition required by this subsection, this subchapter, or Tax Code, Chapter 313.]

(h) Limitation agreement with deferred qualifying time period. If an agreement for limitation on appraised value includes a provision in which the qualifying time period starts more than one year after the date that the application is approved, within 180 days of the start of the deferred qualifying time period, the school district shall [the agreement shall include a provision that]:

(1) provide the comptroller [requires the approved applicant to]:

(A) copies of any documents or other information received from the applicant; [provide an application amendment and supplement to the school district and comptroller;]

~~[(i) that identifies any changes in the information that was provided in the application that was approved by the school district and that was considered by the comptroller;]~~

~~[(ii) no earlier than 180 days prior to the start of the qualifying time period; and]~~

~~[(iii) no later than 90 days prior to the start of the qualifying time period; and]~~

~~(B) after reviewing documents and information provided by the applicant, either: [comply with a written request from the comptroller to provide additional information necessary to prepare a comptroller certificate for a limitation for the conditions prior to the start of the qualifying time period; and]~~

~~(i) a written acknowledgment of receiving the application amendment or supplement; or~~

~~(ii) a statement that no such amendment or supplement has been submitted; and~~

(2) if the comptroller provides:

(A) a comptroller certificate for a limitation with conditions different from the existing agreement, the governing body shall hold a meeting and determine whether to amend the agreement to include the conditions required by the comptroller or terminate the agreement; or

(B) a written explanation of the comptroller's decision not to re-issue a certificate, the school district shall terminate the agreement.

(i) Compliance and enforcement.

(1) The school district shall provide to the comptroller:

(A) any documents that reasonably appear to be substantive documents as defined in this subchapter; and

(B) within seven days of executing the agreement, a copy of the executed agreement and any attachments thereto.

(2) The school district shall provide a copy of the executed agreement to the appraisal district.

(3) The school district shall comply with and enforce the stipulations, provisions, terms, and conditions of the agreement for limitation of the appraised value, this subchapter, and Tax Code, Chapter 313.

(4) To determine and obtain compliance with each agreement, for each calendar year during the term of the agreement the school district shall require the approved applicant to submit:

(A) either:

(i) the information necessary to complete the Annual Eligibility Report, adopted by reference in §9.1052 of this title (relating to Forms); or

(ii) a completed Annual Eligibility Report, adopted by reference in §9.1052 of this title;

(B) a completed Job Creation Compliance Report (Form 50-825), adopted by reference in §9.1052 of this title; and

(C) any information required by the State Auditor Office or its designee.

§9.1059. *Annual Compliance Review for Qualifying Jobs and Penalties.*

(a) The comptroller shall conduct an annual review of new qualifying jobs for each agreement holder to determine whether the

agreement holder has created the number of new qualifying jobs required in the agreement and Tax Code, Chapter 313.

(b) To make the determination, the comptroller may:

(1) review any Job Creation Compliance Report (Form 50-825) submitted by the agreement holder;

(2) request additional information from the agreement holder and inspect the facilities of the agreement holder at which the jobs were to be created, subject to 3 day advance notice to the agreement holder and a mutually agreeable time during regular business hours; or

(3) consider any other information that is available to the comptroller.

(c) The comptroller may issue a determination that a job created by the agreement holder is not a new qualifying job if the job is identified as a qualifying job by the agreement holder:

(1) does not provide 1,440 hours of work or more for that year;

(2) was transferred from a facility of the agreement holder from one area of the state to the property covered by the agreement;

(3) was created to replace a previous employee of the agreement holder;

(4) is not covered by a group health benefit plan for which the business offers to pay at least 72% of the premiums or other charges assessed for employee-only coverage under the plan, regardless of whether an employee may voluntarily waive the coverage; or

(5) does not pay an amount equal to at least 99% of the average weekly wage for manufacturing jobs in the county where the jobs are [school district administrative office is] located and calculated pursuant to the method prescribed by Tax Code, §313.021(5) that is elected by the agreement holder in the application.

(d) If the comptroller makes a determination that the agreement holder did not create the required number of qualifying jobs pursuant to subsection (c) of this section, the comptroller shall provide notice to the agreement holder which shall include:

(1) the cause of the adverse determination; and

(2) corrective measures necessary to remedy the non-compliance.

(e) If the comptroller finds that an agreement holder who received an adverse determination in the previous year has failed to remedy the non-compliance following notification of the determination and the comptroller makes an adverse determination with respect to the agreement holder's compliance in the succeeding year:

(1) the comptroller shall provide notice to the agreement holder as required by subsection (d) of this section; and

(2) the agreement holder shall submit to the comptroller a plan to remedy the non-compliance and certify the agreement holder's intent to fully implement the plan not later than December 31 of the year in which the determination is made.

(f) If the comptroller finds that an agreement holder who received an initial adverse determination under subsection (d) of this section and a second adverse determination under subsection (e) of this section, and has failed to remedy the non-compliance following notification of both determinations and the comptroller makes a third adverse determination with respect to the agreement holder's compliance in the year following the second adverse determination under subsection (e)

of this section, the comptroller shall impose a penalty on the agreement holder in an amount equal to the amount computed by:

(1) subtracting from the number of qualifying jobs required to be created the number of qualifying jobs actually created as determined in the third adverse determination under this subsection; and

(2) multiplying the amount computed under paragraph (1) of this subsection, by the average annual wage for all jobs in the county during the most recent four quarters for which data is available.

(g) Notwithstanding subsection (f) of this section, if the comptroller finds that an agreement holder has received an adverse determination and the comptroller has previously imposed a penalty on the agreement holder under this section one or more times for the same agreement, the comptroller shall impose a penalty on the agreement holder in an amount equal to the amount computed by multiplying the amount computed under subsection (f) of this section, by an amount equal to twice the average annual wage for all jobs in the county during the most recent four quarters for which data is available.

(h) In no event shall a penalty assessed under this section exceed an amount equal to the difference between the amount of the ad valorem tax benefit received by the agreement holder under the agreement in the preceding year and the amount of any supplemental payments made to the school district in that year.

(i) If the comptroller imposes a penalty on an agreement holder under this section three times, the comptroller may rescind the agreement between the agreement holder and the school district under this chapter.

(j) An adverse determination made under this subsection is subject to the provisions applicable to a deficiency determination under, and subject to the provisions to, Tax Code, §§111.008, 111.0081, and 111.009. A penalty imposed under this subsection is an amount the comptroller is required to collect, receive, administer, or enforce, and the determination is subject to the payment and redetermination requirements of Tax Code, §111.0081 and §111.009. A redetermination under Tax Code, §111.009 of an adverse determination under this section is a contested case as defined by Government Code, §2001.003.

(k) The comptroller shall deposit a penalty collected under this section, including any interest and penalty applicable to the penalty, to the credit of the foundation school fund.

(l) The penalties and procedures set out in this section do not affect the enforcement of any provisions in an agreement for value limitation between the school district and an agreement holder.

§9.1060. Agreement for Limitation on Appraised Value.

Pursuant to the provisions of Tax Code, Chapter 313 and this subchapter, in order to implement a limitation on the appraised value for school district maintenance and operation tax purposes on the approved applicant's qualified property that has been approved by the governing body of the school district, at the time of the approval of the application, the authorized representative of the school district and the approved applicant shall execute a Texas Economic Development Act Agreement with terms that at a minimum include:

(1) all Texas Taxpayer Identification Numbers assigned by the comptroller to the approved applicant executing the agreement and all Texas Taxpayer Identification Numbers of its reporting entity, which shall be the same numbers listed on the application and, if the approved applicant is comprised of members of a combined group, all Texas Taxpayer Identification Numbers for each such combined group's members that own a direct interest in the property subject to the proposed agreement;

(2) a stipulation that the agreement is executed on the basis that the application is complete and accurately represents all material representations, information, and facts and incorporates the application, all the attachments thereto, and any application supplement or application amendment as part of the agreement as if set forth fully in the agreement;

(3) a condition that upon the written determination of the governing body of the school district that the application is either incomplete or inaccurate as to any material representation, information, or fact, the agreement shall be invalid and void except for the enforcement of the provisions required by paragraph (12) of this section;

(4) provisions required for an agreement listed in Tax Code, Chapter 313 with particular reference to Tax Code, §313.027(e), (f), and (i);

(5) a provision that identifies the qualifying time period that shall be consistent with the qualifying time period requested in the application;

(6) a provision that identifies the beginning of the limitation period that is consistent with the limitation period requested in the application;

(7) a condition that before the appraised value of the qualified property of the approved applicant may obtain the limitation on the appraised value identified in the agreement, the approved applicant shall make the qualified investment, as defined in Tax Code, §313.021(1), at least in the amounts required in Tax Code, §313.022, or §313.052 if applicable, within the qualifying time period specified in the agreement;

(8) a provision that the approved applicant is required to:

(A) create at least the number of new qualifying jobs required by Tax Code, Chapter 313 during the qualifying time period;

(B) create at least the number of qualifying jobs to which the applicant committed in the application during the qualifying time period;

(C) maintain at least the number of qualifying jobs committed in the application from the time they are created until at least the end of the fifth year following the expiration of the limitation on appraised value provided by the agreement; and

(D) for all non-qualifying jobs that are created, pay an average weekly wage for all non-qualifying jobs that exceeds the average weekly wage for all jobs in the county where the non-qualifying jobs are located;

(9) a provision that identifies the limitation on the appraised value of the qualified property of the approved applicant consistent with Tax Code, §313.027, or if applicable Tax Code, §313.054;

(10) a provision that separately states and explicitly identifies the amount, or the method for determining the amount, of any and all payments or transfers made to the school district or to any person or persons in any form if the payment or transfer of thing of value is provided in recognition of, anticipation of, or consideration for the agreement for limitation on appraised value made pursuant to Tax Code, §313.027(f)(1), (f)(2), or (i);

(11) a provision by which the approved applicant is required to submit to the school district any information as thereafter may be reasonably requested by the school district or the comptroller in order to evaluate the progress of the agreement or administer and implement Tax Code, Chapter 313 and this subchapter;



(12) a provision that:

(A) in the event that the approved applicant fails in any year to comply with the stipulation, provision, term, or condition of the agreement identified in paragraphs (3), (4), (8), or (10) of this section, the approved applicant is assessed as liquidated damages an amount equal to the amount computed by subtracting from the market value of the property for the tax year in which the approved applicant failed to comply, the value of the property as limited by the agreement and multiplying the difference by the maintenance and operations tax rate of the school district;

(B) deems the penalty delinquent if it is not paid on or before February 1 of the following tax year; and

(C) applies Tax Code, §33.01 to the delinquent penalty in the manner that section applies to delinquent taxes;

(13) a provision that the approved applicant shall comply with the conditions included in the certification for a limitation issued by the comptroller;

(14) for agreements in which the governing body of the school district approved a deferral of the start of the qualifying time period, and in which the qualifying time period starts more than one year after the date that the application is approved, provisions that:

(A) require the approved applicant to provide an application amendment or supplement to the school district and comptroller:

(i) that identifies any changes in the information that was provided in the application that was approved by the school district and as considered by the comptroller;

(ii) no earlier than 180 days prior to the start of the qualifying time period; and

(iii) no later than 90 days prior to the start of the qualifying time period;

(B) require the approved applicant to comply with a written request from the school district or comptroller to provide additional information necessary to prepare a comptroller certificate for a limitation for the conditions prior to the start of the qualifying time period;

(C) authorize the governing body of the school district to:

(i) amend the agreement to include the conditions required by the comptroller; or

(ii) terminate the agreement if the comptroller withdraws its certificate for a limitation based on the revised application;

(15) a provision that within 60 days from the date commercial operations begin, the approved applicant shall provide to the school district, the comptroller, and the appraisal district a specific and detailed description of the land, tangible personal property, buildings, or permanent, nonremovable building components (including any affixed to or incorporated into real property) to which the value limitation applies including maps or surveys of sufficient detail and description to locate all such qualified property within the boundaries of the land which is subject to the agreement if the final description is different than the description provided in the application or any supplemental application information;

(16) a provision that in order to amend or in any manner modify the application, agreement, or notice as provided by paragraph (14) of this section, the following shall occur:

(A) the approved applicant shall submit to the school district and the comptroller:

(i) a written request to amend the application and limitation agreement which shall specify the changes the applicant requests;

(ii) any changes to the information that was provided in the application that was approved by the school district and considered by the comptroller; and

(iii) any additional information requested by the school district or the comptroller necessary to evaluate the amendment or modification;

(B) the comptroller shall review the request and any additional information and provide a revised comptroller certificate for a limitation within 90 days of receiving the revised application or the request to amend the application is denied;

(C) in accord with the procedure identified in §9.1054(h) of this title (relating to School District Application Review and Agreement to Limit Appraised Value), the governing body of the school district shall approve or disapprove the request before the expiration of 120 days after the request is filed;

(17) a provision that the failure of the approved applicant to either pay a penalty assessed or provide and implement a plan to remedy a non-compliance as required by the comptroller pursuant to §9.1059 of this title (relating to Annual Compliance Review for Qualifying Jobs and Penalties) is a material breach of the agreement;

(18) a provision that the agreement holder may assign its interest in the agreement only if such assignment is approved according to the provisions of paragraph (16) of this section;

(19) for a Texas Priority Project, a provision that in the event that the approved applicant fails to place in service qualified investment of at least \$1 billion during the qualifying time period the agreement terminates and the applicant is subject to any damages or penalties required by the agreement, the comptroller's rules, or the Act; and

(20) all the terms and conditions in the Texas Economic Development Act Agreement form adopted by reference in §9.1052(a)(6) of this title (relating to Forms).

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502385

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: August 2, 2015

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

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

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

**CHAPTER 151. GENERAL PROVISIONS**

### 37 TAC §151.25

The Texas Board of Criminal Justice proposes amendments to §151.25, concerning the Texas Department of Criminal Justice Tobacco Policy. The amendments are proposed in conjunction with a proposed rule review of §151.25 published in an earlier issue of the *Texas Register*. The proposed amendments are necessary to add the use of vapor products and update the formatting.

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

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

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.013 and §494.010. The Board interprets §494.010 as requiring the Board to adopt a rule that regulates the possession and use of tobacco products by department employees.

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

#### §151.25. *Texas Department of Criminal Justice Tobacco Policy.*

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

- (1) TDCJ [~~or Agency~~]*--*Texas Department of Criminal Justice.
- (2) TBCJ [~~or Board~~]*--*Texas Board of Criminal Justice.
- (3) Tobacco Products--Cigars, cigarettes, snuff, or any similar goods prepared for smoking, chewing, dipping, or any other such personal use.
- (4) TDCJ Property--Land, building, private offices, and vehicles owned, leased, or under contract by the TDCJ, excluding state-owned individual dwellings.
- (5) TDCJ Employee--All employees of the TDCJ, including temporary, part-time, contract employees, and volunteers.
- (6) Visitor--Any non-TDCJ employee on TDCJ property for any purpose other than conducting official state business.
- (7) Persons Conducting Official State Business--Any individual on TDCJ property for the purpose of conducting any form of official state business.
- (8) Designated Outdoor Use Area [~~Areas~~]*--*A location where the use of tobacco and vapor products are [~~is~~] authorized.
- (9) Correctional Facilities--Any secure facility operated by or under contract with the TDCJ.

(10) Vapor Products--Electronic cigarettes (e-cigarettes) or any other device that uses a mechanical heating element, battery, or electronic circuit to deliver vapor that may include nicotine to the individual inhaling from the device, or any substance used to fill or refill the device.

(b) Applicability. This policy is applicable to all employees, persons conducting official state business, and visitors to all TDCJ property.

(c) Policy. The TDCJ is committed to providing a safe and healthy environment and working conditions for employees, visitors, and offenders. ~~[All persons visiting offenders are prohibited from possessing or using any tobacco products. The] TDCJ employees, visitors, and persons on [the] TDCJ property conducting official state business are authorized to possess and use tobacco or vapor products in accordance with this section [Agency policies and procedures].~~

(d) Procedures. The use of tobacco or vapor products inside all TDCJ property is strictly prohibited. Designated outdoor use ~~[tobacco]~~ areas shall be at a sufficient distance from any place at which employees regularly perform duties to ensure that no employee who abstains from the use of tobacco or vapor products is physically affected by the use of the ~~[tobacco]~~ products at the designated outdoor use areas. Tobacco or vapor use in the designated outdoor use areas shall not negatively affect the comfort or safety of any employee, visitor, or offender. Employees shall be permitted to use tobacco or vapor products during their work hours while on break and during their lunch period.

#### (1) Administrative Offices.

(A) Employees, visitors, and persons conducting official state business are permitted to carry and store tobacco and vapor products while in administrative offices that are not located within a correctional facility. The use of tobacco or vapor products is only allowed ~~[outdoors]~~ at designated outdoor use areas or in personal vehicles and any used tobacco or vapor products shall be disposed of in the receptacles provided or in personal vehicles. For administrative offices located on a correctional facility, procedures are set forth in subsection (d)(2) of this section.

(B) The senior administrator of an administrative office shall designate outdoor use areas and ensure the areas are at least 15 feet from any entryway to the building, preferably removed from the view of passing traffic. If the building owner or ordinance requires a greater distance, the senior administrator shall comply. [The Board designates the smoking areas for TDCJ property, other than correctional facilities as provided for in subsection (d)(2) of this section, as any location at least 15 feet from any entryway to the building, preferably removed from the view of passing traffic. The Board designates the same smoking area for administrative offices located in any privately-owned building as the same area set forth by the building owner or local ordinance. If no area is set forth by the building owner or local ordinance, the Board designates the smoking area as any location at least 15 feet from any entryway to the building, preferably removed from the view of passing traffic.]

#### (2) Secure Correctional Facilities within the Correctional Institutions and Parole Divisions.

(A) Employees, visitors, and persons conducting official state business are prohibited from carrying and storing tobacco and vapor products while in secure correctional facilities. The use of tobacco or vapor products is only allowed ~~[outdoors]~~ in designated outdoor use areas or in personal vehicles and any used tobacco or vapor products shall be disposed of in the receptacles provided or in personal vehicles.

(B) The unit warden shall designate outdoor use areas and ensure the areas are at least 15 feet from the facility's main entrance. [The Board designates correctional facility parking lots, areas adjacent to these parking lots and established break areas that are at least 15 feet from the correctional facility's main entrance as smoking areas for secure correctional facilities.]

~~[(C) Designated areas shall be clearly identified by signs located at the main entrance to the correctional facility.]~~

(e) Violation of this policy may result in disciplinary action pursuant to PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." Visitors and persons conducting official state business in violation of this policy may be asked to leave the property at the discretion of the senior supervisor onsite.

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

Filed with the Office of the Secretary of State on June 15, 2015.

TRD-201502265

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: August 2, 2015

For further information, please call: (936) 437-6700



### 37 TAC §151.75

The Texas Board of Criminal Justice proposes amendments to §151.75, concerning Standards of Conduct for Financial Advisors and Service Providers. The amendments are proposed in conjunction with a proposed rule review of §151.75 published in an earlier issue of the *Texas Register*. The proposed amendments are necessary to update the formatting.

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

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

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code, Chapter 404, 552, 2256, §492.013, and §2263.004. The Board interprets §2263.004 as requiring the Board to adopt a rule establishing standards of conduct applicable to financial advisors or service providers who are not employees of the state governmental entity.

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

### §151.75. Standards of Conduct for Financial Advisors and Service Providers.

(a) Definitions. ["]Financial Advisor or Service Provider["] is a person or business entity who acts as a financial advisor, financial consultant, money manager, investment manager, or broker.

(b) Applicability.

(1) This section applies in connection with the management or investment of any state funds managed or invested by the Texas Department of Criminal Justice (TDCJ) under the Texas Constitution or other law, including Chapters 404 and 2256, Texas Government Code, without regard to whether the funds are held in the state treasury.

(2) This section applies to financial advisors or service providers who are not employees of the TDCJ, who provide financial services to or advise the TDCJ in connection with the management or investment of state funds, and who:

(A) May reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from TDCJ during a fiscal year; or

(B) Render important investment or funds management advice to the TDCJ.

(3) The standards adopted in this rule are intended to identify professional and ethical standards by which all financial advisors or service providers shall abide in addition to the professional and ethical standards that may already be imposed on financial advisors or service providers under any contracts or service agreements with the TDCJ.

(c) Disclosure Requirements.

(1) A financial advisor or service provider shall disclose in writing to the TDCJ and to the State Auditor:

(A) Any relationship the financial advisor or service provider has with any party to a transaction with the TDCJ, other than a relationship necessary to the investment or fund management services that the financial advisor or service provider performs for the TDCJ, if the relationship could reasonably be expected to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the TDCJ; and

(B) All direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the TDCJ, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the TDCJ in connection with the management or investment of state funds.

(2) The financial advisor or service provider shall disclose a relationship described by paragraph (1) of subsection (c) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

(3) A financial advisor or service provider shall file annually a statement with the TDCJ and with the State Auditor. The statement shall disclose each relationship and pecuniary interest described by paragraph (1) of [this] subsection (c) or, if no relationship or pecuniary interest described by subsection (c) existed during the disclosure period, the statement shall affirmatively state that fact.

(4) The annual statement shall be filed no later than April 15 on a form prescribed by the TDCJ. The statement shall cover the reporting period of the previous calendar year.

(5) The financial advisor or service provider shall promptly file a new or amended statement with the TDCJ and with the State Auditor whenever there is new information to report under paragraph (1) of subsection (c).

(d) Standards of Conduct.

(1) Compliance.

(A) These standards are intended to be in addition to, and not in lieu of, a financial advisor's or service provider's obligations under its contract or service agreement with the TDCJ. In the event of a conflict between a financial advisor's or service provider's obligations under these standards and under its contract or services agreement, the standard that imposes a stricter ethics or disclosure requirement controls.

(B) A financial advisor or service provider shall be knowledgeable about these standards, keep current with revisions to these standards, and abide by the provisions set forth in these standards.

(C) In all professional activities, a financial advisor or service provider shall perform services in accordance with applicable laws, rules, and regulations of governmental agencies and other applicable authorities, including the TDCJ, and in accordance with any established policies of the TDCJ.

(2) Qualification Standards.

(A) A financial advisor or service provider shall render opinions or advice, or perform professional services only in those areas in which the financial advisor or service provider has competence based on education, training, or experience. In areas where a financial advisor or service provider is not qualified, the financial advisor or service provider shall seek the counsel of qualified individuals or refer the TDCJ to such persons.

(B) A financial advisor or service provider shall keep informed of developments in the field of financial planning and investments and participate in continuing education throughout the financial advisor's or service provider's relationship with the TDCJ in order to improve professional competence in all areas in which the financial advisor or service provider is engaged.

(3) Integrity.

(A) A financial advisor or service provider has an obligation to observe standards of professional conduct in the course of providing advice, recommendations, and other services performed for the TDCJ. A financial advisor or service provider shall perform professional services with honesty, integrity, skill, and care. In the course of professional activities, a financial advisor or service provider shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental[5] or other regulatory body or official, or any other person or entity.

(B) A financial advisor's or service provider's relationship with a third party shall not be used to obtain illegal or improper treatment from such third party on behalf of the TDCJ.

(4) Objectivity. A financial advisor or service provider shall maintain objectivity and be free of conflicts of interest in discharging their [its] responsibilities. A financial advisor or service provider shall remain independent in fact and appearance when providing financial planning and investment advisory services to the TDCJ.

(5) Prudence. A financial advisor or service provider shall exercise reasonable and prudent professional judgment in providing professional services to the TDCJ.

(6) Competence. A financial advisor or service provider shall strive to continually improve their [its] competence and [the] qual-

ity of services, and discharge their [its] responsibilities to the best of their [its] ability.

(7) Conflicts of Interest.

(A) If a financial advisor or service provider is aware of any significant conflict between the interests of the TDCJ and the interests of another person, the financial advisor or service provider shall advise the TDCJ of the conflict and shall also include appropriate qualifications or disclosures in any related communication.

(B) A financial advisor or service provider shall not perform professional services involving an actual or potential conflict of interest with the TDCJ unless the financial advisor's or service provider's ability to act fairly is unimpaired, there has been full disclosure of the conflict to the TDCJ, and the TDCJ has expressly agreed in writing to the performance of the services by the financial advisor or service provider.

(8) Confidentiality.

(A) A financial advisor or service provider shall not disclose to another person any confidential information obtained from the TDCJ or regarding the TDCJ's investments unless authorized to do so by the TDCJ in writing or required to do so by law.

(B) For the purposes of this subsection, "confidential information" refers to information not in the public domain of which the financial advisor or service provider becomes aware during the course of rendering professional services to the TDCJ. It may include information of a proprietary nature, information that is excepted from disclosure under the *Public Information Act* [Public Information Act], Chapter 552, Texas Government Code, or information restricted from disclosure under any contract or service agreement with the TDCJ.

(e) Contract Voidable. A contract under which a financial advisor or service provider renders financial services or advice to the TDCJ is voidable by the TDCJ if the financial advisor or service provider violates a standard of conduct outlined in this rule.

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

Filed with the Office of the Secretary of State on June 15, 2015.

TRD-201502267

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: August 2, 2015

For further information, please call: (936) 437-6700



## CHAPTER 154. PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS

### 37 TAC §§154.1 - 154.9, 154.11

The Texas Board of Criminal Justice proposes amendments to §§154.1 - 154.9 and §154.11 in Chapter 154, concerning the Private Sector Prison Industries Programs. The amendments are proposed in conjunction with a proposed rule review of Chapter 154 published in an earlier issue of the *Texas Register*. The proposed amendments are necessary non-substantive changes.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rules will be in effect, enforcing or administering

the rules will not have foreseeable implications related to costs or revenues for state or local government.

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

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rules in the *Texas Register*.

The amendments are proposed under Texas Government Code §§492.0011, 492.013, 497.004(a), 497.006, 497.051, 497.0527, 497.056(a), 497.057, 497.058, 497.0581, 497.059, 497.0595, 497.0596, 497.060, 497.062, and 497.063. The Texas Board of Criminal Justice interprets §492.0011 as requiring the Board to approve, certify, and supervise private sector prison industries programs.

Cross reference to statutes: Texas Labor Code §302.016.

#### §154.1. Authority.

(a) The Texas Board of Criminal Justice [~~(TBCJ)~~] shall approve, certify, and supervise the Private Sector Prison Industries Programs operated by the Texas Department of Criminal Justice [~~(TDCJ)~~], the Texas Juvenile Justice Department [~~Texas Youth Commission (TYC)~~], and [~~in~~] county correctional facilities.

(b) This oversight function shall include:

(1) Promulgating board rules governing the Private Sector Prison Industries Programs as may be authorized under state and federal law;

(2) Designating or un-designating a cost accounting center (CAC); and

(3) Determining compliance of the CACs with state and federal guidelines and law, as well as 37 Texas Administrative Code §154.11.

#### §154.2. Definitions.

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

(1) "Certificate Holder" is a governmental entity that has been certified by United States Department of Justice, Bureau of Justice Assistance (BJA) to administer a Prison Industry Enhancement (PIE) certification program.

(2) "Certification" is the designation by the BJA of a Prison Work Pilot Project pursuant to 18 U.S.C. §1761(c) and other applicable federal and state laws.

(3) "Cost Accounting Center" (CAC) is a distinct goods production unit of a PIE certification program that is managed as a separate accounting entity under the authority of a certificate holder. All CACs shall operate in compliance with the provisions set forth in 18 U.S.C. §1761(c).

(4) "Displacement" is the loss of employment in skills, crafts, or trades in which there is a surplus of available gainful labor in the state. Displacement may not result in a significant impairment to existing contracts. The term displacement as used in this definition includes all such prohibited activities, as well as the inappropiate

transfer of private sector job functions to PIE certification program participants.

(5) "Fair Market Value" is the amount or rate that is equal to or greater than the average amount or rate paid by the state for the lease of substantially similar property.

(6) "Governmental Entity" is the Texas Department of Criminal Justice [~~(TDCJ)~~], the Texas Juvenile Justice Department [~~Texas Youth Commission (TYC)~~], and any county that operates a PIE certification program.

(7) "Locality" is the local workforce development area designated by the Texas Workforce Commission [~~(TWC)~~] for the geographic area where the work will be performed.

(8) "Participant" is an offender employed by a PIE certification program.

(9) "Prevailing Wage" is a wage rate that is not less than that paid for work of a similar nature in the locality in which the work will be performed.

(10) "Private Sector Prison Industries Programs" is the term used by the state, which has the same meaning as the PIE certification program, as authorized by 18 U.S.C. §1761(c).

(11) "United States Department of Justice, Bureau of Justice Assistance" (BJA) is a federal agency, which certifies that local or state prison industry programs meet all the necessary requirements to sell prison-made goods in interstate commerce.

#### §154.3. Program Inquiries.

(a) All written inquiries and requests for information related to the Private Sector Prison Industries Programs shall be submitted to the Texas Board of Criminal Justice (TBCJ), P.O. Box 13084, Austin, TX 78711.

(b) TBCJ staff shall refer each inquiry or request to the Texas Department of Criminal Justice (TDCJ), Texas Juvenile Justice Department [~~Texas Youth Commission~~], or county correctional facility for a response.

(c) The TDCJ shall respond in a timely manner and provide a copy of the response to the chairman of the TBCJ and the chairman of the TBCJ Business and Financial Operations Committee.

#### §154.4. Prison Industry Enhancement Certification Program Wages and Non-Displacement of Workers.

(a) As provided in this chapter, each private industry interested in establishing a Prison Industry Enhancement (PIE) certification program in a county correctional facility, a facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ), or the Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] shall submit documentation of the prevailing wage for each job classification in the proposal submitted to the Texas Board of Criminal Justice [~~(TBCJ)~~] pursuant to 37 Texas Administrative Code §154.7.

(b) The private industry shall obtain written verification from the Texas Workforce Commission (TWC) that the wage plan for the operation of the PIE certification program is consistent with the prevailing wage for each job classification in the locality in which the work will be performed.

(c) Upon receipt of this information, the TDCJ, TJJD [~~TYC~~], or county correctional facility shall request from the TWC [~~Texas Workforce Commission~~] information necessary to certify that:

(1) The private industry will not result in the displacement of employees or the loss of existing jobs of a similar nature by any employer in this state. For the purpose of this rule, a program does not

result in the loss of existing jobs if, at the time of initial certification, the jobs are performed by workers in a foreign country; and

(2) The private industry will not be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the state.

(d) Notwithstanding the provisions of subsection (b), a contract for the provision of services does not require payment of prevailing wages as long as the contract requires the payment of not less than the federal or state minimum wage, whichever is higher.

*§154.5. Notice Requirements.*

(a) Any private industry proposing to operate a Prison Industry Enhancement (PIE) certification program in a county correctional facility, a facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ), or the Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] shall notify the following of its intent to do so:

(1) The state senator and state representative in whose district the PIE certification program covered by the contract is or will be located;

(2) The executive heads of the Texas American Federation of Labor and Congress of Industrial Organizations [~~(AFL-CIO)~~], the Texas Association of Manufacturers, the National Federation of Independent Business/Texas, the Texas Association of Business, and the Texas Association of Workforce Boards; and

(3) The Chamber of Commerce in any municipality or county in which the PIE certification program covered by the contract is or will be located.

(b) The notice required by subsection (a) shall include a specific description, in plain language and in an easily readable and understandable format, of any product that will be manufactured or service to be provided under the contract.

(c) The notice shall be provided in writing by certified mail and, at a minimum, shall include the following:

(1) Identification of the scope of the intended project, including projected number of jobs for participants and free world workers;

(2) Specific job descriptions for any work that will be performed by participants under the contract;

(3) Specific description in plain language of any product that will be manufactured or service to be provided;

(4) Projected initiation date;

(5) Information regarding PIE certification program participation;

(6) Prevailing wage information;

(7) An explanation that statutory consultation is required;

(8) A statement by the private industry that it will not impair existing contracts for goods or services; and

(9) A statement indicating that comments are invited.

(d) A copy of the notices and any comments received shall be provided to the Texas Board of Criminal Justice (TBCJ) in the proposal submitted pursuant to 37 Texas Administrative Code §154.7.

(e) The notices required in this subsection do not relieve the TDCJ, TJJD [~~TYC~~], or the county of providing notice not later than 60 days prior to entering into a contract with private industry for a PIE certification program as required by Texas Government Code §497.0596.

The TDCJ, TJJD [~~TYC~~], and the county may charge the private industry for the cost of providing the notices.

(f) Any employer that employs persons in this state to perform work in the same job descriptions or are otherwise engaged in the manufacture of the same or a substantially similar product may submit a sworn statement to the TBCJ alleging that the employer has been or would be negatively affected by the contract to be entered into or renewed. The TBCJ shall consider this statement when determining whether to designate a cost accounting center [~~(CAC)~~].

*§154.6. Workers' [~~Workers~~] Compensation for Prison Industry Enhancement Certification Programs.*

All private industries shall provide proof of workers' [~~workers~~] compensation insurance or its equivalent to the Texas Board of Criminal Justice [~~(TBCJ)~~] in the proposal submitted pursuant to 37 Texas Administrative Code §154.7 and at the time of each renewal period.

*§154.7. Designation of Cost Accounting Centers.*

(a) Any private industry interested in establishing a cost accounting center (CAC) in a county correctional facility, a facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ), or the Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] shall submit a written proposal to the Texas Board of Criminal Justice (TBCJ), P.O. Box 13084, Austin, TX 78711.

(b) The proposal shall include, but not be limited to the following information:

(1) A summary of the product to be manufactured or the service to be provided;

(2) The number of participants to be employed and the number of other employees who will be employed on site;

(3) Specific job descriptions;

(4) Documentation of the prevailing wage for similar work performed in the locality in which the private industry will be operated and the wage program participants will be paid in accordance with 37 Texas Administrative Code §154.4;

(5) Evidence of workers' compensation coverage or equivalent private insurance;

(6) Documentation reflecting that notifications required in 37 Texas Administrative [~~Tex. Admin.~~] Code §154.5 have been made;

(7) Certification that the private industry is eligible to receive state funds, a grant, or loan under Texas Family Code §231.006;

(8) Documentation of compliance with the *National Environmental Policy Act*, [~~National Environmental Policy Act~~], if applicable, in the form required by those regulations, or an application for categorical exclusion;

(9) Financial statements to provide proof of financial stability; and

(10) Any other information required by the TDCJ, TJJD [~~TYC~~], or the operator of the county correctional facility.

(c) TBCJ staff shall forward a copy of the proposal to the TDCJ for review and confirmation that the proposal meets the requirements of state and federal law applicable to the Prison Industry Enhancement [~~(PIE)~~] certification program.

(d) The TDCJ shall present the proposal at a regularly scheduled meeting of the TBCJ for discussion, consideration, and possible action.

(e) The TDCJ shall notify the private industry and TJJD [~~TYC~~] or the operator of the county correctional facility, as applicable, of the

TBCJ's decision. If approved by the TBCJ, the private industry, and TDCJ, TJJD [~~TYC~~], or operator of the county correctional facility shall complete the appropriate Bureau of Justice Assistance (BJA) forms for designation as a new CAC, and return the forms to the TDCJ.

(f) If approved, the TDCJ shall submit the designation forms and a copy of the proposal to the BJA.

*§154.8. Limitations on Contracts.*

(a) Only the Texas Board of Criminal Justice (TBCJ) is authorized to approve contracts and renewals or substantive modifications of contracts with an employer for a Prison Industry Enhancement (PIE) certification program. Contracts and renewals or substantive modifications of contracts shall be presented at a regularly scheduled meeting of the TBCJ for discussion, consideration, and possible action provided that the governmental entity may extend a contract for up to a six-month period without TBCJ approval.

(b) For each cost accounting center (CAC) designated after June 19, 2009, the Texas Department of Criminal Justice (TDCJ), the Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~], or a county correctional facility may not enter into a contract or renew a contract with a private industry for a PIE certification program if the TBCJ determines that the contract has negatively affected, or would negatively affect, any employer in this state, including the loss of existing jobs provided by the employer to employees in this state who are not incarcerated or imprisoned. The contract shall:

(1) Include specific job descriptions for any work that will be performed by participants under the contract;

(2) Include a specific description, in plain language and in an easily readable and understandable format, of any product that will be manufactured or service that will be provided under this contract; and

(3) Charge a private sector prison industry employer or other participating entity the fair market value for the lease of any property owned by the TDCJ, TJJD [~~TYC~~], or the county and leased to the private industry employer or entity under the contract.

(c) For the purpose of this chapter, a contract does not negatively affect an employer if the only negative effect alleged in a sworn statement by the employer is the loss of existing jobs that, at the time the sworn statement is submitted to the TBCJ, are performed by workers in a foreign country.

(d) The TBCJ will not enter into a contract for a new PIE certification program if there are currently more participants in the program at any one time or more CACs than authorized by Texas Government Code §497.062.

*§154.9. Distribution of Wages of Offenders Participating in the Prison Industry Enhancement Certification Program.*

(a) Each cost accounting center (CAC) shall collect and disburse earned wages according to federal and state law, federal guidelines, the contract, and this rule.

(b) The CAC shall disburse 80 percent of the participant's gross wages according to the following schedule of priorities for the Texas Department of Criminal Justice (TDCJ) and county correctional facility participants:

(1) Applicable taxes;

(2) Twenty percent for family support of [~~for~~] legal dependents or to the Office of the Attorney General (OAG) Child Support Division as payment toward a child support court order;

(3) Ten percent for restitution;

(4) Ten percent to the OAG Crime Victims' Compensation Fund; and

(5) The remaining percentage to room and board unless the participant has an outstanding child support obligation, in which case the percentage shall be applied to any outstanding child support obligation until such balance is paid in full.

(c) The CAC shall deposit 20 percent of the participant's gross wages into the participant's trust fund account for the benefit of the participant unless the participant has any outstanding child support obligation, in which case, 50 percent of this amount shall be applied to any outstanding child support until such balance is paid in full.

(d) The CAC shall disburse the participant's wages according to the following schedule of priorities for Texas Juvenile Justice Department (TJJD) [~~Texas Youth Commission (TYC)~~] participants:

(1) Applicable taxes;

(2) Ten percent for family support of [~~for~~] legal dependents or to the OAG Child Support Division as payment toward a child support court order;

(3) Five percent for restitution;

(4) Eight percent to the OAG Crime Victims' Compensation Fund; and

(5) The remaining percentage to be deposited into the participant's trust fund account.

(e) The TDCJ general counsel shall consult with the TJJD [~~TYC~~] prior to any revisions to the disbursement of the TJJD [~~TYC~~] participant wages.

(f) The CAC shall maintain accurate records of the receipt and distribution of participant wages. Accounting records shall be available for audit by the Texas Board of Criminal Justice (TBCJ), the TDCJ, or representatives of the state or federal government.

(g) The CAC shall report the distribution of wages in the format designated by the Bureau of Justice Assistance (BJA).

(h) The CAC shall complete and forward the report of the distribution of wages on a quarterly basis for each calendar year. The report shall be submitted to the TDCJ not later than the 10th working day following the end of the quarter.

(i) The TDCJ shall compile a combined report of the wage distributions for all CACs by the 20th day following the end of the quarter. The report shall be provided to the TBCJ and the BJA for review.

(j) The TDCJ shall provide written notice to the TJJD [~~TYC~~], the county correctional facilities, the participants, and the CACs of any changes by the TBCJ to the distribution of wages of offenders participating in the PIE certification program.

(k) Each month, the TDCJ shall forward money deducted from participant wages for room and board to the comptroller of public accounts [~~CPA~~].

*§154.11. Program Compliance.*

The Texas Department of Criminal Justice [~~TDCJ~~], Texas Juvenile Justice Department [~~Texas Youth Commission (TYC)~~], and the operator of a county correctional facility shall develop policies and procedures and an audit plan to monitor each cost accounting center (CAC) under its respective jurisdiction for compliance with state and federal law, guidelines, and rules adopted by the Texas Board of Criminal Justice (TBCJ). Audits shall be conducted annually.

(1) Compliance monitoring reports, including a proposed plan of corrective action for areas of noncompliance, shall be submitted to the TBCJ.

(2) Significant or continuing noncompliance may result in termination of the contract with the CAC.

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

Filed with the Office of the Secretary of State on June 15, 2015.

TRD-201502269

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: August 2, 2015

For further information, please call: (936) 437-6700



## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 358. IDENTIFYING, REPORTING AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH AND SERIOUS INCIDENTS

The Texas Juvenile Justice Department (TJJD) proposes amendments to the following rules in Chapter 358: §§358.100, 358.120, 358.140, 358.200, and 358.220, concerning Identifying, Reporting and Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents.

TJJD also proposes new §§358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, and 358.620, concerning Identifying, Reporting and Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents.

TJJD also proposes the repeal of §§358.300, 358.320, 358.400, 358.420, 358.440, 358.460, 358.480, 358.500, 358.600, 358.620, 358.640, 358.660, 358.680, 358.700, 358.720, 358.740, 358.760, 358.780, 358.800, 358.820, 358.840, 358.900, and 358.920, concerning Identifying, Reporting and Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents.

Throughout Chapter 358, minor clarifications, grammatical corrections, and terminology updates have been made. Specific changes made throughout the chapter are listed in the following paragraphs.

#### SECTION-BY-SECTION SUMMARY

The amendments to §358.100 will: 1) revise the definitions of *Sexual Abuse by Contact* and *Sexual Abuse by Non-Contact* to more closely align with the Prison Rape Elimination Act National Standards for Juveniles (28 C.F.R. Part 115); 2) add definitions for the following terms: *Attempted Escape*, *Chief Administrative Officer*, and *TJJD*; 3) delete definitions for the following terms: *Administrator*, *Call Line*, and *Commission*; 4) in the definition of *Juvenile Justice Facility*, revise the description of a non-secure facility to align with the types of non-secure facilities that must

be certified by the juvenile board under Family Code §51.126; and 5) clarify that *Youth Sexual Conduct* includes defined conduct between two or more juveniles, regardless of whether the juveniles consented to the conduct.

The amendments to §358.120 will delete the paragraph about use of headings. The proposed rule will also clarify that the words "include," "includes," and "including" mean that a non-exhaustive list will follow.

The amendments to §358.140 will clarify that the chapter applies to employees, volunteers, and "other individuals working under the auspices" of a juvenile justice facility or program (rather than all "contractors and service providers" in a department, facility or program). This new wording is consistent with the definition of abuse in Texas Family Code §261.401. The proposed rule will also add a provision explaining that working "under the auspices of a facility or program" means the person is providing a service to juveniles when that service is a condition imposed by a juvenile court or juvenile probation department.

The amendments to §358.200 will include only minor, non-substantive wording changes.

The amendments to §358.220 will: 1) delete "driver's license number or state-issued identification number of subject(s) of investigation" from the list of data that must be submitted to TJJD annually; 2) clarify that departments must submit any additional information not listed in this rule if specifically requested by TJJD; and 3) re-title the rule as "Data Reconciliation."

The contents of the new §358.240 can currently be found in §358.480. The text of the new section will include only minor, non-substantive wording changes.

New §358.300 will consolidate information from §§358.400, 358.500, 358.600, and 358.640. All information regarding time frames and methods for reporting alleged abuse, neglect, and exploitation, including sexual abuse, serious physical abuse, and death, will now be found in the new §358.300.

The repeal of §358.300 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.600.

The contents of the new §358.320 can currently be found in §358.460. The text of the new section will clarify that the parental notice or the attempt to notify must be documented on the Incident Report Form *and* (rather than "or") in the internal investigation report.

The repeal of §358.320 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.620.

The contents of the new §358.340 can currently be found in §358.440. The text of the new section will clarify that during orientation in a *juvenile justice program* (in addition to orientation in a juvenile justice facility), juveniles must be advised in writing of their right to report allegations of abuse to TJJD.

The contents of the new §358.360 can currently be found in §358.420. The text of the new section will make only minor, non-substantive wording changes.

The contents of the new §358.400 can currently be found in §§358.620, 358.660, 358.680, 358.700, 358.740, and 358.760. Other than consolidating information regarding internal investigations into one rule, no substantive changes will be made.



The repeal of §358.400 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.300.

The contents of the new §358.420 can currently be found in §358.720. The text of the new section will make only minor, non-substantive wording changes.

The repeal of §358.420 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.360.

The contents of the new §358.440 can currently be found in §358.900. The text of the new section will make only minor, non-substantive wording changes.

The repeal of §358.440 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.340.

The contents of the new §358.460 can currently be found in §358.780. The text of the new section will make only minor, non-substantive wording changes.

The repeal of §358.460 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.320.

Section 358.480 will be repealed. The contents of this rule will be moved to the new §358.240.

The contents of the new §358.500 can currently be found in §358.800. The text of the new section will make only minor, non-substantive wording changes.

The repeal of §358.500 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.300.

The contents of the new §358.520 can currently be found in §358.820. The text of the new section will make only minor, non-substantive wording changes.

The contents of the new §358.540 can currently be found in §358.840. The text of the new section will delete the phrase "if the release is allowed by law" from the requirement to submit relevant medical documentation to TJJJ along with the internal investigation report.

The contents of the new §358.600 can currently be found in §358.300. The text of the new section will make only minor, non-substantive wording changes.

The repeal of §358.600 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.300.

The contents of the new §358.620 can currently be found in §358.320. The text of the new section will make only minor, non-substantive wording changes.

The repeal of §358.620 will allow this section number to be used for a new section with different content. The information from this rule will be moved to the new §358.400.

Section 358.640 will be repealed. The duty to submit a custodial death report to the Office of the Attorney General will be moved to the new §358.300. The duty to complete an internal investigation report will be addressed in the new §358.500.

Section 358.660 will be repealed. The duty to investigate any death in a department or program will be addressed in the new

§358.400. The duty to complete an internal investigation report will be addressed in the new §358.500.

Section 358.680 will be repealed. The duty to investigate any death in a department or program will be addressed in the new §358.400. The duty to complete an internal investigation report will be addressed in the new §358.500.

Section 358.700 will be repealed. The contents of this rule will be moved to the new §358.400.

Section 358.720 will be repealed. The contents of this rule will be moved to the new §358.420.

Section 358.740 will be repealed. The contents of this rule will be moved to the new §358.400.

Section 358.760 will be repealed. The contents of this rule will be moved to the new §358.400.

Section 358.780 will be repealed. The contents of this rule will be moved to the new §358.460.

Section 358.800 will be repealed. The contents of this rule will be moved to the new §358.500.

Section 358.820 will be repealed. The contents of this rule will be moved to the new §358.520.

Section 358.840 will be repealed. The contents of this rule will be moved to the new §358.540.

Section 358.900 will be repealed. The contents of this rule will be moved to the new §358.440.

Section 358.920 will be repealed and will not be moved to a new section number. Additional legal review has determined that TJJJ does not have the statutory authorization to permanently remove names from original TJJJ records.

#### RULE REVIEW

Simultaneously with these proposed rulemaking actions, TJJJ also publishes this notice of intent to review Chapter 358 as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting these rules continue to exist may be submitted to TJJJ by following the instructions provided later in this notice.

#### FISCAL NOTE

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

#### PUBLIC BENEFIT/COSTS

Jill Mata, General Counsel, has determined that for each year of the first five years the new, amended, and repealed sections are in effect, the public benefit anticipated as a result of administering the sections will be the protection of juveniles through an organized system of identifying, reporting, and investigating alleged abuse, neglect, and exploitation. Another anticipated public benefit is the availability of rules that are clarified and reorganized for ease of use.

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

#### PUBLIC COMMENTS

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

**37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, 358.620**

#### STATUTORY AUTHORITY

The amended and new sections are proposed under Texas Human Resources Code §221.002, which requires TJJJ to adopt rules that provide minimum standards for the operation of a juvenile board that are necessary to provide adequate and effective probation services. The amended and new sections are also proposed under Texas Human Resources Code §221.004, which requires TJJJ to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments. Additionally the amended and new sections are proposed under Texas Family Code §261.401, which requires TJJJ to adopt rules relating to the investigation and resolution of reports received concerning abuse, neglect, or exploitation.

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

#### §358.100. Definitions.

Terms used in this chapter ~~shall~~ have the following meanings unless otherwise expressly defined within the chapter.

(1) Abuse, Neglect, or Exploitation--The terms ~~definitions of~~ "abuse," "neglect," "~~neglect~~" and "exploitation" ~~shall~~ have the meanings given in [meaning ascribed under] Texas Family Code §261.001 and §261.401. For the purposes of this chapter, "abuse" includes sexual abuse and serious physical abuse [and sexual] as defined in this section.

~~(2) Administrator--The chief administrative officer of a juvenile probation department, a public or private juvenile justice program or a public or private juvenile justice facility.]~~

(2) ~~(3)~~ Alleged Victim--A juvenile ~~[under the jurisdiction of the juvenile court or participating in a program operated under the authority of the governing board or juvenile board]~~ who is alleged to be a victim of abuse, neglect, or exploitation.

(3) Attempted Escape--Committing an act that amounts to more than mere planning but that fails to effect an escape.

(4) Attempted Suicide--Any voluntary and intentional action that could likely [reasonably] result in taking one's own life.

(5) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.

~~(5) Call Line--The toll-free number made available for reporting allegations of abuse, neglect, exploitation and serious incidents within the juvenile justice system.]~~

~~(6) Commission--The Texas Juvenile Probation Commission.]~~

(6) ~~(7)~~ Escape--

~~(A)~~ The ~~[voluntary,]~~ unauthorized departure of a juvenile~~;~~ or attempt to depart, by an individual~~;~~ who is in custody~~;~~ or

~~(B)~~ the failure of a juvenile [Failure] to return to custody following an authorized temporary leave ~~[for a specific purpose or limited period].~~

(7) ~~(8)~~ Founded--The finding assigned to an internal investigation when the evidence indicates that the conduct~~;~~ which formed the basis of an allegation of abuse, neglect, or exploitation~~;~~ occurred.

(8) ~~(9)~~ Incident Report Form--The ~~[required]~~ form used to report to TJJJ ~~[the Commission]~~ allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents.

(9) ~~(10)~~ Inconclusive--The finding assigned to an internal investigation when the evidence does not clearly indicate whether or not the conduct that~~;~~ which formed the basis of an allegation of abuse, neglect, or exploitation~~;~~ occurred.

(10) ~~(11)~~ Internal Investigation--A formalized and systematic inquiry conducted ~~[by the administrator or designee of a juvenile probation department, juvenile justice program or juvenile justice facility]~~ in response to an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(11) ~~(12)~~ Internal Investigation Report--The written report submitted to TJJJ ~~[the Commission]~~ that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, or exploitation or the death of a juvenile.

(12) ~~(13)~~ Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(13) ~~(14)~~ Juvenile Justice Facility ("facility")--A facility that serves juveniles under juvenile court jurisdiction and that is~~;~~ including its premises and all affiliated sites, whether contiguous or detached~~;~~ operated wholly or partly by or under the authority of the governing board or~~;~~ juvenile board or by a private vendor under a contract with the governing board, juvenile board, or governmental unit ~~[that serves juveniles under juvenile court jurisdiction].~~ The term includes all premises and affiliated sites of the facility, whether contiguous or detached. The term includes, but is not limited to:

(A) a ~~[A]~~ public or private juvenile pre-adjudication secure detention facility, including a short-term detention facility (i.e., holdover) required to be certified in accordance with Texas Family Code §51.12;

(B) a ~~[A]~~ public or private juvenile post-adjudication secure correctional facility required to be certified in accordance with Texas Family Code §51.125~~;~~ except for a facility operated solely for children committed to the Texas Youth Commission~~;~~ and

(C) a ~~[A]~~ public or private juvenile non-secure correctional [juvenile post-adjudication residential treatment] facility required to be certified in accordance with Texas Family Code §51.126. [housing juveniles under juvenile court jurisdiction.]

(14) ~~(15)~~ Juvenile Justice Program ("program")--A program or department that:

~~(A)~~ serves juveniles under juvenile court or juvenile board jurisdiction;

~~(B)~~ is operated wholly or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board~~;~~ or juvenile board [that serves juveniles under juvenile court jurisdiction or juvenile board jurisdiction]. The term includes:

~~(i)~~ a juvenile justice alternative education program; ~~[and]~~

(ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; [jurisdiction] and

(iii) a juvenile probation department.

(15) [(46)] Juvenile Probation Department ("department")--A [All physical offices and premises utilized by a county or district level] governmental unit established under the authority of a juvenile board [board(s)] to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 221 [441] of the Texas Human Resources Code.

(16) [(47)] Medical Treatment--Medical care, processes, and procedures that are performed by a physician, physician assistant, licensed nurse practitioner, emergency medical technician (EMT), paramedic, or dentist. Diagnostic procedures are excluded from this definition unless [further] intervention beyond basic first aid is required.

(17) [(48)] Reasonable Belief--A belief that would be held by an ordinary and prudent person in the same circumstances [as the reporter].

(18) [(49)] Report--Formal notification to TJJD [the Commission] of alleged abuse, neglect, or exploitation, the [of] death of a juvenile, or a [of] serious incident.

(19) [(20)] Reportable Injury--Any injury sustained by a juvenile accidentally, intentionally, recklessly, or otherwise that:

(A) does not result from a personal, mechanical, or chemical restraint and requires [Requires] medical treatment [as defined in this section]; or

(B) results [Results] from a personal, mechanical, or chemical restraint and is a substantial injury [as defined in this section].

(20) [(21)] Serious Incident--Attempted escape, attempted suicide, escape, reportable injury, youth-on-youth physical assault, or youth sexual conduct [as defined in this section].

(21) [(22)] Serious Physical Abuse--Bodily harm or a condition that:

(A) resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect, or exploitation; and; if the bodily harm or condition]

(B) requires medical treatment [as defined in this section].

(22) [(23)] Sexual Abuse--Conduct committed by an employee, volunteer, or other individual working under the auspices of a facility or program [any person] against a juvenile that includes sexual abuse by contact or sexual abuse by non-contact. A juvenile, regardless of age, may not [affirmatively or impliedly] consent to the acts as defined in paragraphs (23) and (24) [and (25)] of this section under any circumstances.

(23) [(24)] Sexual Abuse by Contact--Any physical contact with a juvenile that includes: [intentional touching of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, intimidate, hurt, humiliate or harass; arouse or gratify sexual desire; deviate sexual intercourse; sexual contact; sexual intercourse; or sexual performance as those terms are defined in subparagraphs (A) - (D) of this paragraph.]

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part with the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire; and

(F) any attempt to engage in the activities described in subparagraphs (A) - (E) of this paragraph.

[(A)] "Deviate sexual intercourse" means:}]

[(i)] any contact between any part of the genitals of one person and the mouth or anus of another person; or]

[(ii)] the penetration of the genitals or the anus of another person with a hand, finger or other object.}]

[(B)] "Sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:}]

[(i)] any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a person; or]

[(ii)] any touching of any part of the body of a person, including touching through clothing, with the anus, breast, or any part of the genitals of a person.}]

[(C)] "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.}]

[(D)] "Sexual performance" means acts of a sexual or suggestive nature performed in front of one or more persons including simulated or actual sexual intercourse, deviate sexual intercourse, bestiality, masturbation, sado-masochistic abuse or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.}]

(24) [(25)] Sexual Abuse by Non-Contact--Any sexual behavior, conduct, harassment, or actions other than those defined as [by] sexual abuse by contact, which are exhibited, performed, or simulated[:]

[(A)] in the presence of a juvenile or with reckless disregard for the presence of a juvenile, including but not limited to:[:]

(A) any threat or request for a juvenile to engage in the activities described in paragraph (23) of this section;

(B) any display of uncovered genitalia, buttocks, or breasts in the presence of a juvenile;

(C) voyeurism, which means an invasion of privacy of a juvenile for reasons unrelated to official duties, such as peering at a juvenile who is using a toilet to perform bodily functions; requiring a juvenile to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a juvenile's naked body or of a juvenile performing bodily functions; and

[(B)] with the intent to arouse or gratify the sexual desire of any person;:]

~~[(C) with the intent to intimidate, hurt, humiliate or harass any person;]~~

~~(D) sexual harassment, which includes [including] repeated verbal [statement or] comments or gestures of a sexual nature, [; and]~~

~~[(E)] including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or [profane or] obscene language or gestures.~~

~~[(F) These behaviors, conduct and actions include indecent exposure, voyeurism, distribution or exhibition of pornographic or sexually explicit material or sexual performance as defined in paragraph (24)(D) of this section.]~~

~~(25) [(26)] Subject of Investigation--A person alleged as being responsible for the abuse, neglect, or exploitation of a juvenile through the person's own actions or failure to act.~~

~~(26) [(27)] Substantial Injury--An injury that is significant in size, degree, or severity.~~

~~(27) TJJD--the Texas Juvenile Justice Department.~~

~~(28) Unfounded--The finding assigned to an internal investigation when the evidence indicates the conduct that[, which] formed the basis of an allegation of abuse, neglect, or exploitation[,] did not occur.~~

~~(29) Youth-on-Youth Physical Assault--A physical altercation between two or more juveniles that results in any of the involved parties sustaining an injury that requires medical treatment [as defined in this section].~~

~~(30) Youth Sexual Conduct--Conduct between two [Two] or more juveniles, regardless of age, that is conduct described in paragraphs (23) and (24) of this section, regardless of whether the juveniles consented to the conduct, [who engage in deviate sexual intercourse, sexual contact, sexual intercourse, sexual performance as those terms are defined in paragraph (24) of this section or sexual behavior, conduct or actions which are exhibited, performed or simulated as those terms are defined in paragraph (25) of this section. A juvenile may not consent to the acts as defined in paragraphs (24) and (25) of this section under any circumstances. Consent may not be implied regardless of the age of the juvenile.]~~

*§358.120. Interpretation.*

~~[(a) Headings: The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.]~~

~~[(b)] The words "include," "includes," and [including: The word,] "including" when following a general statement or term are to be understood as introducing a non-exhaustive list, unless the context clearly indicates otherwise. [; is not to be construed as limiting the general statement or term to any specific item or manner set forth or to similar items or matters, but rather as permitting the general statement or term to refer also to all other items or matters that could reasonably fall within its broadest possible scope.]~~

*§358.140. Applicability.*

~~(a) Unless otherwise expressly stated, this chapter applies [noted, these standards apply] to:~~

~~(1) [all] allegations of abuse, neglect, or [and] exploitation[, death and serious incidents] involving a juvenile and an employee, [intern,] volunteer, or other individual working under the auspices of a facility or program [contractor or service provider (hereafter~~

referred to as "any person" or "all persons") in a juvenile probation department ("department"), juvenile justice program ("program") or juvenile justice facility ("facility"), regardless of the physical location of the alleged abuse, neglect, or exploitation;[, death or serious incident.]

~~(2) serious incidents involving a juvenile that:~~

~~(A) occur on the premises of a program or facility; or~~

~~(B) regardless of the physical location, occur while in the presence of an employee, volunteer, or other individual working under the auspices of a facility or program; and~~

~~(3) a death of a juvenile that:~~

~~(A) occurs on the premises of a program or facility;~~

~~(B) results from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program or facility; or~~

~~(C) regardless of the physical location, occurs while in the presence of an employee, volunteer, or other individual working under the auspices of a facility or program.~~

~~(b) For purposes of this chapter, "working under the auspices of a facility or program" includes providing a service to juveniles when that service is:~~

~~(1) a condition of probation, deferred prosecution, or release; or~~

~~(2) a condition otherwise imposed by a juvenile court or juvenile probation department.~~

*§358.200. Policy and Procedure.*

Departments, programs, and facilities must ~~[shall]~~ have written policies and procedures that require, in accordance with this chapter: ~~[for reporting serious incidents to the Commission and]~~

~~(1) [for] reporting allegations of [deaths and alleged] abuse, neglect, or [and] exploitation or the death of a juvenile to local law enforcement, TJJD, [the Commission] and other appropriate governmental units; and[-]~~

~~(2) reporting serious incidents to TJJD.~~

*§358.220. Data Reconciliation [Collection].*

~~(a) The chief administrative officer or designee must [Departments, programs and facilities shall] fully and promptly provide to TJJD the data listed in this section for all allegations of [requested data pertinent to alleged] abuse, neglect, or exploitation, the death of a juvenile, and serious incidents occurring within the reporting period [to the Commission].~~

~~(b) The data must [shall] be submitted in the electronic format requested or supplied by TJJD [the Commission].~~

~~(c) The data must [shall] include:~~

~~(1) name and Personal Identification Number (PID) of each alleged victim [Alleged victim(s) name];~~

~~[(2) Alleged victim(s) personal identification number (PID);]~~

~~(2) [(3)] name and date of birth of each subject [Name of subject(s)] of investigation;~~

~~[(4) Date of birth and driver's license or state issued identification number of subject(s) of investigation;]~~

~~(3) [(5)] date and time [Date] of alleged incident;~~

~~[(6) Time of alleged incident;]~~

~~(4) [(7) date [Date] the alleged incident was reported to TJJJ [the Commission];~~

~~(5) [(8) type [Type] of alleged incident (i.e., abuse, neglect, [or] exploitation [(ANE)], death, or serious incident [(SI))];~~

~~(6) [(9) type [Type] of injury, if applicable;~~

~~(7) [(10) whether the alleged incident was restraint-related and [Restraint related], if so, what type of restraint was involved (i.e., personal, mechanical, or chemical);~~

~~(8) [(11) disposition [Disposition] of internal investigation (i.e., founded, unfounded, or inconclusive [Founded, Unfounded, Inconclusive]); and~~

~~(9) [(12) county-generated [County generated] case identification number.~~

~~(d) The data must [shall] be supplied at least annually or more frequently if [as] required by TJJJ. The data must include any additional information not listed in this section if specifically requested by TJJJ [Commission].~~

§358.240. Signage.

(a) Departments, programs, and facilities must prominently display signage provided by TJJJ regarding a zero-tolerance policy concerning abuse of juveniles. The signage must be displayed in each of the following places:

(1) lobby or visitation areas of the department, program, or facility to which the public has access;

(2) juvenile housing and common areas;

(3) common medical treatment areas;

(4) common educational areas; and

(5) other common areas.

(b) Signage must be posted in English and Spanish.

§358.300. Identifying and Reporting Abuse, Neglect, Exploitation, and Death.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility or program must report the death of a juvenile or an allegation of abuse, neglect, or exploitation to TJJJ and local law enforcement if he/she:

(1) witnesses, learns of, or receives an oral or written statement from an alleged victim or other person with knowledge of the death of a juvenile or an allegation of abuse, neglect, or exploitation; or

(2) has a reasonable belief that the death of a juvenile or abuse, neglect, or exploitation has occurred.

(b) Non-Delegation of Duty to Report. In accordance with Texas Family Code §261.101, the duty to report cannot be delegated to another person.

(c) Other than Sexual Abuse or Serious Physical Abuse.

(1) Time Frames for Reporting. A report of alleged abuse, neglect, or exploitation other than allegations involving sexual abuse or serious physical abuse must be made within 24 hours from the time a person gains knowledge of or has a reasonable belief that alleged abuse, neglect, or exploitation has occurred.

(2) Methods for Reporting.

(A) The report to TJJJ may be made by phone or by faxing or e-mailing a completed Incident Report Form.

(B) If the report to TJJJ is made by phone, a completed Incident Report Form must be submitted within 24 hours after the phone report.

(C) The report to law enforcement must be made by phone.

(d) Sexual Abuse or Serious Physical Abuse.

(1) Time Frames for Reporting.

(A) A report of alleged sexual abuse or serious physical abuse must be made to local law enforcement immediately, but no later than one hour after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(B) A report of alleged sexual abuse or serious physical abuse must be made to TJJJ immediately, but no later than four hours after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(2) Methods for Reporting.

(A) The initial report to TJJJ must be made by phone using the toll-free number as designated by TJJJ.

(B) Within 24 hours after the initial phone report to TJJJ, the completed Incident Report Form must be submitted to TJJJ by fax or e-mail.

(C) The initial report to law enforcement must be made by phone.

(e) Death of a Juvenile.

(1) Time Frames for Reporting.

(A) A report of a death must be made to local law enforcement immediately, and no later than one hour after the discovery or notification of the death.

(B) A report of a death must be made to TJJJ immediately, and no later than four hours after the discovery or notification of the death.

(C) The chief administrative officer or designee must:

(i) submit a written report of the cause of death to the state Attorney General no later than 30 days after the juvenile's death if required by Texas Code of Criminal Procedure Article 49.18(b); and

(ii) submit a copy of the death investigation report to TJJJ within 10 calendar days after completion.

(2) Methods for Reporting.

(A) The initial report to TJJJ must be made by phone using the toll-free number as designated by TJJJ.

(B) Within 24 hours after the phone report to TJJJ, the completed Incident Report Form must be submitted to TJJJ by fax or e-mail.

(C) The initial report to law enforcement must be made by phone.

§358.320. Parental Notification.

(a) Requirement to Notify. Notification, or diligent efforts to notify, must be made to the parent(s), guardian(s), and custodian(s) of a juvenile who has died or who is the alleged victim of abuse, neglect, or exploitation.

(b) Time of Notification. The notice or efforts to notify required by subsection (a) of this section must be made as soon as possible, but no later than 24 hours from the time a person gains knowledge of or has a reasonable belief that the allegation of abuse, neglect, or exploitation or the death of a juvenile occurred.

(c) Method of Notification. The notice or efforts to notify required by subsection (a) of this section may be made by phone, in writing, or in person by the chief administrative officer or designee.

(d) Documentation of Notification. The notice or efforts to notify required by subsection (a) of this section must be documented on TJJJ's Incident Report Form and in the internal investigation report.

§358.340. Reporting of Allegations by Juveniles.

(a) Right to Report. Juveniles have the right to report to TJJJ allegations of abuse, neglect, or exploitation and the death of a juvenile. During orientation to a facility or program, juveniles must be advised in writing of:

- (1) their right to report allegations under this subsection; and
- (2) TJJJ's toll-free number available for reporting allegations under this subsection.

(b) Policy and Procedure. Departments, programs, and facilities must have written policies and procedures that provide a juvenile with reasonable, free, and confidential access to TJJJ for reporting allegations.

(c) Access to TJJJ. Upon the request of a juvenile, staff must facilitate the juvenile's unimpeded access to TJJJ to report allegations.

§358.360. Allegations Occurring Outside the Juvenile Justice System.

Any person who witnesses, learns of, receives an oral or written statement from an alleged victim or other person with knowledge, or has a reasonable belief as to the occurrence of alleged abuse, neglect, or exploitation involving a juvenile that is not alleged to involve an employee, volunteer, or other individual working under the auspices of a facility or program must report the incident to law enforcement or to the appropriate governmental unit as required in Texas Family Code Chapter 261.

§358.400. Internal Investigation.

(a) Investigation Requirement. In every case in which an allegation of abuse, neglect, or exploitation or the death of a juvenile has occurred, an internal investigation must be conducted. The investigation must be conducted by a person qualified by experience or training to conduct a comprehensive investigation.

(b) Policy and Procedure. Departments, programs, and facilities must have written policies and procedures for conducting internal investigations of allegations of abuse, neglect, or exploitation or the death of a juvenile. The internal investigation must be conducted in accordance with the policies and procedures of the department, program, or facility.

(c) Juvenile Board Responsibilities. If the chief administrative officer is the person alleged to have abused, neglected, or exploited a juvenile and the chief administrative officer is the highest ranking department, program, or facility official, the juvenile board must:

- (1) conduct the internal investigation; or
- (2) appoint an individual to conduct the internal investigation who is not one of the following:
  - (A) the person alleged to have abused, neglected, or exploited the juvenile(s);

(B) a subordinate of the person alleged to have abused, neglected, or exploited the juvenile(s); or

(C) a law enforcement officer currently acting in the capacity as a criminal investigator for the alleged abuse, neglect, or exploitation or the death of a juvenile.

(d) Initiation of Investigation. The internal investigation must be initiated immediately upon the chief administrative officer or designee gaining knowledge of an allegation of abuse, neglect, or exploitation or the death of a juvenile. However, the initiation of the internal investigation will be postponed if:

- (1) directed by law enforcement;
- (2) requested by TJJJ; or
- (3) the integrity of potential evidence could be compromised.

(e) Time Frame for Internal Investigation. The internal investigation must be completed within 30 business days after the initial report to TJJJ. TJJJ may extend this time frame upon request. TJJJ may require submission of all information compiled to date or a statement of the status of the investigation when determining whether or not to grant an extension or after granting an extension.

(f) Written and Electronically Recorded Statements. During the internal investigation, diligent efforts must be made to obtain written or electronically recorded oral statements from all persons with direct knowledge of the alleged incident.

§358.420. Reassignment or Administrative Leave During the Internal Investigation.

(a) Upon gaining knowledge of an allegation of abuse, neglect, or exploitation, and until the finding of the internal investigation is determined, the chief administrative officer or designee must immediately place any person alleged to have abused, neglected, or exploited a juvenile on administrative leave or reassign the person to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(b) If, during the internal investigation, the subject of investigation resigns or is terminated from employment, TJJJ must be notified no later than the second business day after the resignation or termination.

(c) If a subject of investigation obtains employment in another jurisdiction before the disposition of the internal investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the internal investigation is finalized in the county of previous employment.

§358.440. Cooperation with TJJJ Investigation.

(a) The juvenile board, chief administrative officer, or designee must fully and promptly cooperate with a TJJJ investigation of an allegation of abuse, neglect, or exploitation or the death of a juvenile by providing all evidence requested by TJJJ in the format requested.

(b) All persons must fully cooperate with any investigation of an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(c) The juvenile board, chief administrative officer, or designee must make a diligent effort to identify and make available for questioning all persons with knowledge of an allegation of abuse, neglect, or exploitation or the death of a juvenile which is the subject of a TJJJ investigation.

§358.460. Corrective Measures.

At the conclusion of the internal investigation, the governing board, juvenile board, chief administrative officer, or designee must take appropriate corrective measures, if warranted, that may include:

- (1) a review of the policies and procedures pertinent to the alleged incident;
- (2) revision of any policies or procedures as needed;
- (3) administrative disciplinary action or appropriate personnel actions against all persons found to have abused, neglected, or exploited a juvenile; and
- (4) the provision of additional training for all appropriate persons to ensure the safety of the juveniles, employees, and others.

§358.500. Internal Investigation Report.

An internal investigation report must be completed at the conclusion of each internal investigation resulting from an allegation of abuse, neglect, or exploitation or the death of a juvenile.

§358.520. Required Components of an Internal Investigation Report.  
The internal investigation report must include:

- (1) the date the internal investigation was initiated;
- (2) the date the internal investigation was completed;
- (3) the date the alleged victim's parent, guardian, or custodian was notified of the allegation, or documentation that diligent efforts to provide the notification were made;
- (4) a summary of the original allegation;
- (5) relevant policies and procedures related to the incident;
- (6) a summary or listing of the steps taken during the internal investigation;
- (7) a written summary of the content of all oral interviews conducted;
- (8) a listing of all evidence collected during the internal investigation, including all audio and/or video recordings, polygraph examinations, etc.;
- (9) relevant findings of the investigation that support the disposition;
- (10) One of the following dispositions:
  - (A) founded;
  - (B) unfounded; or
  - (C) inconclusive;
- (11) the administrative disciplinary action or corrective measures taken to date, if applicable (e.g., termination, suspension, retrained, returned to duty, or none);
- (12) the date the internal investigation report was completed;
- (13) the names of all persons who participated in conducting the internal investigation; and
- (14) the name and signature of the person who submitted the internal investigation report.

§358.540. Submission of Internal Investigation Report.

- (a) A copy of the internal investigation report must be submitted to TJJJ within five calendar days following its completion.
- (b) The following documentation collected during the internal investigation must be submitted to TJJJ with the internal investigation report:

- (1) written statements;
- (2) relevant medical documentation;
- (3) training records, if applicable; and
- (4) any other documentation used to reach the disposition of the internal investigation.

§358.600. Serious Incidents.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility or program must report a serious incident to TJJJ if he/she:

- (1) witnesses, learns of, or receives an oral or written statement from a juvenile or other person with knowledge of a serious incident; or
- (2) has a reasonable belief that a serious incident has occurred.

(b) Time Frame for Reporting. A report of a serious incident must be made within 24 hours from the time a person gains knowledge of or has a reasonable belief that the serious incident occurred.

(c) Methods for Reporting Serious Incidents.

- (1) The report may be made by phone or by faxing or e-mailing a completed Incident Report Form to TJJJ.
- (2) If the report is made by phone, a completed Incident Report Form must be submitted to TJJJ within 24 hours after the phone report.

§358.620. Medical Documentation for Serious Incidents.

A treatment discharge form or other medical documentation that contains evidence of medical treatment pertinent to the reported incident must be submitted to TJJJ within 24 hours after receipt by the department, program, or facility.

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502380

Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 2, 2015

For further information, please call: (512) 490-7278



**37 TAC §§358.300, 358.320, 358.400, 358.420, 358.440, 358.460, 358.480, 358.500, 358.600, 358.620, 358.640, 358.660, 358.680, 358.700, 358.720, 358.740, 358.760, 358.780, 358.800, 358.820, 358.840, 358.900, 358.920**

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

**STATUTORY AUTHORITY**

The repeals are proposed under Texas Human Resources Code §221.002, which requires TJJJ to adopt rules that provide minimum standards for the operation of a juvenile board that are necessary to provide adequate and effective probation services. The amended and new sections are also proposed under Texas

Human Resources Code §221.004, which requires TJJJ to adopt rules that provide standards for the collection and reporting of information about juvenile offenders by local probation departments. Additionally the amended and new sections are proposed under Texas Family Code §261.401, which requires TJJJ to adopt rules relating to the investigation and resolution of reports received concerning abuse, neglect, or exploitation.

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

§358.300. *Serious Incidents.*

§358.320. *Medical Documentation for Serious Incidents.*

§358.400. *Abuse, Neglect, and Exploitation.*

§358.420. *Allegations Occurring Outside the Juvenile System.*

§358.440. *Reporting of Allegations by Juveniles.*

§358.460. *Parental Notification.*

§358.480. *Signage.*

§358.500. *Serious Physical Abuse and Sexual Abuse.*

§358.600. *Death.*

§358.620. *Custodial Death Investigation in a Facility.*

§358.640. *Custodial Death Investigation Report.*

§358.660. *Custodial Death Investigation in a Department or Program.*

§358.680. *Non-Custodial Death Investigation in a Department or Program.*

§358.700. *Internal Investigation.*

§358.720. *Reassignment or Administrative Leave During the Internal Investigation.*

§358.740. *Written and Electronically Recorded Statements.*

§358.760. *Juvenile Board Responsibilities.*

§358.780. *Corrective Measures.*

§358.800. *Internal Investigation Report.*

§358.820. *Internal Investigation Report Components.*

§358.840. *Submission of Internal Investigation Report.*

§358.900. *Cooperation with Commission Investigation.*

§358.920. *Redaction of Records.*

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502383

Jill Mata

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 2, 2015

For further information, please call: (512) 490-7278





# 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 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

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

##### SUBCHAPTER A. GENERAL RULES

###### 1 TAC §20.1

The Texas Ethics Commission withdraws proposed amendments to §20.1 which appeared in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2459).

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502390

Natalia Luna Ashley

Executive Director

Texas Ethics Commission

Effective date: June 22, 2015

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



## TITLE 22. EXAMINING BOARDS

### PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

#### CHAPTER 681. PROFESSIONAL COUNSELORS

##### SUBCHAPTER A. THE BOARD

###### 22 TAC §§681.2, 681.9, 681.12, 681.14, 681.15

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §§681.2, 681.9, 681.12, 681.14, and 681.15, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502282

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972

### SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

###### 22 TAC §681.31

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §681.31, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502283

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972



### SUBCHAPTER C. CODE OF ETHICS

###### 22 TAC §681.41, §681.48

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §681.41 and §681.48, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502284

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972



### SUBCHAPTER D. APPLICATION PROCEDURES

###### 22 TAC §681.72

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §681.72, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502285

Glynda Corley  
Chair  
Texas State Board of Examiners of Professional Counselors  
Effective date: June 16, 2015  
For further information, please call: (512) 776-6972

◆ ◆ ◆  
**SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE**

**22 TAC §§681.81 - 681.83**

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §§681.81 - 681.83, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502286

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972

◆ ◆ ◆  
**SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE**

**22 TAC §§681.91 - 681.93**

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §§681.91 - 681.93, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502287

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972

◆ ◆ ◆  
**SUBCHAPTER G. LICENSURE EXAMINATIONS**

**22 TAC §681.102**

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §681.102, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502288

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972

◆ ◆ ◆  
**SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS**

**22 TAC §§681.123, §681.125**

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §681.123 and §681.125, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502289

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972

◆ ◆ ◆  
**SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS**

**22 TAC §§681.141, §681.142**

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §681.141 and §681.142, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502290

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972

◆ ◆ ◆  
**SUBCHAPTER K. COMPLAINTS AND VIOLATIONS**

**22 TAC §§681.161, 681.162, 681.166**

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §§681.161, 681.162 and 681.166, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502291

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972

SUBCHAPTER M. SCHEDULE OF  
SANCTIONS

**22 TAC §681.202**

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §681.202, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502292

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972



SUBCHAPTER N. PARENTING  
COORDINATION AND PARENTING  
FACILITATION

**22 TAC §681.251**

The Texas State Board of Examiners of Professional Counselors withdraws proposed amended §681.251, which appeared in the May 15, 2015, issue of the *Texas Register* (40 TexReg 2640).

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502293

Glynda Corley

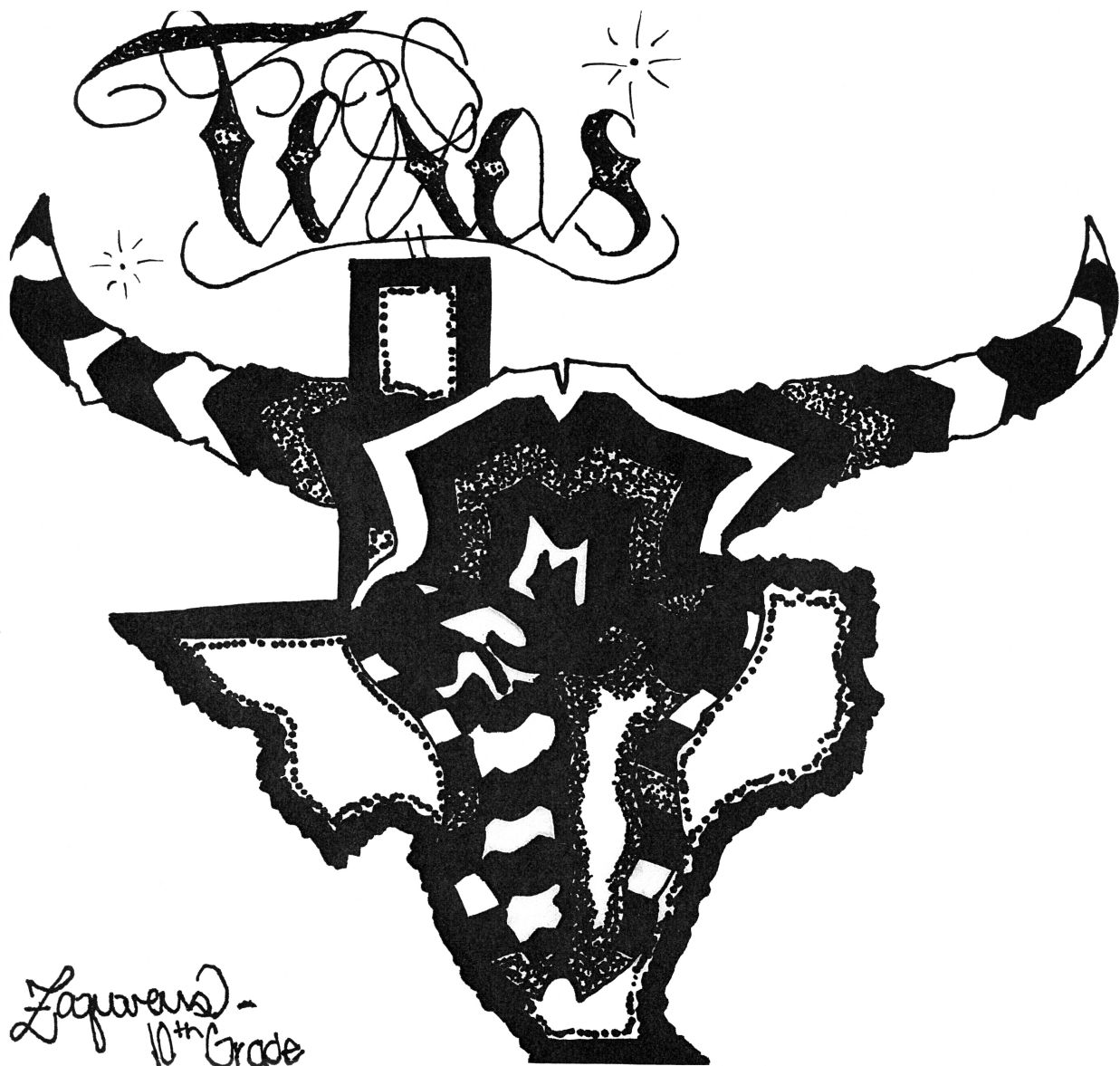
Chair

Texas State Board of Examiners of Professional Counselors

Effective date: June 16, 2015

For further information, please call: (512) 776-6972





Zagwans -  
10<sup>th</sup> Grade

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 5. TEXAS FACILITIES COMMISSION

#### CHAPTER 111. ADMINISTRATION SUBCHAPTER B. GENERAL PROVISIONS

##### 1 TAC §111.26

The Texas Facilities Commission (Commission) adopts new §111.26, concerning Contract Monitoring Roles and Responsibilities, without changes to the proposed text as published in the April 3, 2015, issue of the *Texas Register* (40 TexReg 1929). The text of the adopted rule will not be republished.

Government Code §2261.202 requires each state agency that makes procurements to which Chapter 2261 applies to establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff. The Commission has determined that such a rule will enhance the Commission's contract management policies and that the new rule should be added to Subchapter B, General Provisions, of Chapter 111, Title 1, of the Texas Administrative Code, which also addresses rulemaking procedures of the Commission.

The Commission received no comments regarding the proposed rule.

##### Statutory Authority

The new rule is adopted pursuant to Texas Government Code §2261.202, requiring state agencies to adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities of agency staff, and Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

##### Cross Reference to Statute

The statutory provisions affected by the proposed rule are those set forth in Texas Government Code §2261.202.

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

Filed with the Office of the Secretary of State on June 19, 2015.  
TRD-201502361

Kay Molina  
General Counsel  
Texas Facilities Commission  
Effective date: July 9, 2015  
Proposal publication date: April 3, 2015  
For further information, please call: (512) 463-4257

## TITLE 7. BANKING AND SECURITIES

### PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

#### CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) adopts amendments to §§89.207, 89.601 and 89.802, concerning Property Tax Lenders.

The commission adopts the amendments to §§89.207, 89.601 and 89.802 without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2353).

In general, the purpose of the adopted amendments is to provide guidelines for charging legitimate discount points in connection with property tax loans. The amendments replace a portion of a previously adopted rule that prohibited discount points in §89.601(d), which appeared in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1068).

At the commission's meeting on April 17, 2015, individuals from the following organizations provided oral testimony supporting the proposal: Protect My Texas Property and the Texas Property Tax Lienholders Association. In addition, the commission received three written comments on the proposal from the following organizations and entities: the Law Firm of Daniel J. Young, PLLC; Sombrero Capital, LLC; and the Texas Property Tax Lienholders Association. One commenter supported the proposed recordkeeping and disclosure requirements, but opposed the prohibition on including discount points in the principal balance or funds advanced. The other two commenters were generally supportive of the amendments, although one of these supportive commenters suggested additional requirements for legitimate discount points, including bona fide discounts and additional disclosures. A more detailed analysis of the comments is included after the purpose discussion regarding §89.601(d).

The agency originally received informal pre-comments on property tax loan discount points at a stakeholder meeting held in September 2014. Stakeholders also provided official comments regarding property tax loan discount points in response to proposed rule amendments that appeared in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8484) and the Decem-

ber 26, 2014, issue of the *Texas Register* (39 TexReg 10122). The commission has considered these official comments and informal pre-comments in developing the current amendments.

### *I. Summary of adopted amendments*

The amendments to §89.207, concerning Files and Records Required, add clause (x) to paragraph (3)(A) concerning the property tax loan transaction file. The amendments specify that a property tax lender must maintain written documentation of discount points offered to the property owner, including a written proposal that includes a contract rate without discount points and a lower contract rate based on discount points.

The amendments to §89.601, concerning Fees for Closings Costs, are contained in subsection (d). The amendments to §89.601(d) address the charging of legitimate discount points in connection with a property tax loan. Subsection (d) states that legitimate discount points are not subject to the general maximum fee limit for property tax loan closing costs described by §89.601(c). Paragraph (1) explains that in order for discount points to be legitimate, they must truly correspond to a reduced interest rate, they cannot be necessary to originate the loan, and the borrower must be provided with a written proposal that includes a contract rate without discount points and a lower contract rate based on discount points.

New §89.601(d)(2) states that any discount point or other origination fee that does not meet the definition in paragraph (1) will be subject to the general maximum fee limit described by subsection (c). New §89.601(d)(3) specifies that legitimate discount points must be included in the calculation of the effective rate and upon prepayment in full, must be spread under Texas Finance Code, §302.101. New §89.601(d)(4) specifies that discount points must be paid by the borrower at or before closing of the loan, and that discount points may not be included in the funds advanced or principal balance. New §89.601(d)(5) specifies that a lender may not finance discount points through a promissory note or contract payable to the property tax lender or an affiliated business.

The amendments to §89.802, concerning Payoff Statements, add subparagraph (C) to paragraph (9) concerning the itemization of the total payoff amount. The amendments to §89.802 provide that any refunds resulting from unearned legitimate discount points must be itemized on the payoff statement.

### *II. Purpose and justification*

The amendments have three primary purposes. First, they help ensure that any discount points charged by a property tax lender are legitimate prepaid interest, rather than a disguised closing cost in violation of Texas Tax Code, §32.06(e). Texas courts have generally held discount points to be a form of prepaid interest. See, e.g., *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 596 (Tex. 2013) (holding that legitimate discount points are interest and are not subject to the Texas Constitution's 3% cap on fees necessary to originate a home equity loan); *Tarver v. Sebring Capital Credit Corp.*, 69 S.W.3d 708, 713 (Tex. App.--Waco 2002, no pet.) (holding the same). Like other forms of prepaid interest, discount points must be spread over the term of the loan in order to determine whether the loan is usurious. See Texas Finance Code §302.101; *Tanner Dev. Co. v. Ferguson*, 561 S.W.2d 777, 786-87 (Tex. 1977). However, in order to be legitimate, discount points must be an option available to the borrower, rather than a fee necessary to originate the loan. See *Norwood*, 418 S.W.3d at 596 (explaining that "true discount points

are not fees 'necessary to originate, evaluate, maintain, record, insure, or service' but are an option available to the borrower").

In addition, paragraphs (4) and (5) help ensure that property tax lenders comply with the limitation on funds advanced in Texas Tax Code, §32.06(e), which provides: "A transferee holding a tax lien transferred as provided by this section may not charge a greater rate of interest than 18 percent a year on the funds advanced. Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs." This provision distinguishes between interest that the property tax lender may charge and funds that the property tax lender may advance to the borrower. Funds advanced are expressly limited to the six items listed in the second sentence of §32.06(e). The interest that the property tax lender can charge is described in the first sentence of §32.06(e), and is not part of the funds advanced. There is no indication in §32.06(e) that a property tax lender may charge interest on its own interest. See *William C. Dear & Assocs., Inc. v. Plastronics, Inc.*, 913 S.W.2d 251, 254 (Tex. App.--Amarillo 1996, writ denied) (interpreting a usury statute to prohibit compounding of interest where it was not expressly authorized). For this reason, discount points (as a form of prepaid interest) are not part of the funds advanced under Texas Tax Code, §32.06(e), and should not be included in the principal balance of the loan, as specified in paragraph (4). In addition, paragraph (5) specifies that a lender may not circumvent this requirement by entering into a promissory note or contract for the payment of discount points.

Third, the amendments ensure transparency in connection with discount points. By requiring a complete written disclosure of the contract rate and annual percentage rate with and without discount points, the amendments enable borrowers to make an informed decision before closing.

The amendments address three problems with discount points that were described in written comments on the December 26 re-proposal of the previous version of this rule.

First, the comments on the December 26 re-proposal revealed that certain property tax lenders have used discount points as disguised closing costs, rather than an option to obtain a lower interest rate. For example, one commenter expressed concern "that a handful of licensees are attempting to disguise a portion of their closing costs as discount points. . . . [C]ertain licensees originate transfers but immediately sell them to an unrelated funding company, keeping the closing costs and 'discount points' as their sole compensation for each transaction. What this practice has created is a system whereby these originators have incentive to charge high discount points, although the rate charged by the licensee actually funding the loan does not decrease proportionally." Along the same lines, some comments suggested that certain property tax lenders currently rely on discount points as a primary source of funding. For example, one commenter stated: "Without our own funding capabilities, we rely on the origination fees and discount points to be able to meet our financial obligations in running our business." In other words, certain property tax lenders are relying on discount points in order to compensate them for the costs incurred in closing a loan. Discount points should be a method for providing borrowers with an option to obtain a lower interest rate. They should not be a method of maximizing profits or charging disguised closing costs. In order to be legitimate, discount points must be an option available to the borrower, rather than a fee necessary to originate the loan. See, e.g., *Fin. Comm'n of Tex. v. Norwood*,

418 S.W.3d 566, 596 (Tex. 2013). The comments did not indicate that any property tax lenders have offered a borrower a clear statement of the option to obtain a higher interest rate, versus a lower rate with discount points.

Second, the comments on the December 26 re-proposal revealed that certain property tax lenders have included discount points in the principal balance of property tax loans, in violation of the limitation on funds advanced in Texas Tax Code, §32.06(e). For example, one commenter was affiliated with a property tax lender that has charged discount points, and objected to the prohibition on including discount points in the principal balance of a loan. This commenter stated: "Overwhelmingly, the property owner who is seeking a tax lien loan is cash strapped. . . . Requiring discount points to be paid in cash takes yet one more option away from borrowers who have precious few options in the first place." Ten other commenters on the December re-proposal supported the prohibition on including discount points in the principal balance of a property tax loan. For example, one commenter supported "ensuring that prepaid interest is kept separate from interest bearing principal to avoid charging property owners interest on the prepaid interest."

Third, the comments on the December 26 re-proposal revealed that discount points for property tax loans can be confusing and not sufficiently transparent to borrowers. One commenter stated: "Approximately half of our customers do not have a mortgage and therefore have probably not been exposed to the concept of discount points." In the case of financed discount points, the property tax lender exaggerates the apparent savings that the borrower is receiving in exchange for paying for the discount points. It may appear to the borrower that there will be a substantial savings through an interest rate reduction, but this savings is partially offset by the extra principal that the borrower will have to repay over the life of the loan. In addition, as discussed previously, the comments did not indicate that any property tax lenders have offered a borrower a clear statement of the option to obtain a higher interest rate, versus a lower rate with discount points.

### *III. Comments on proposed amendments*

The commission received three written comments on the May 1 proposal containing the current amendments.

One commenter supported the rule, stating that although it would "prefer the prohibition of discount points altogether, we are in support of the proposed amendments, and believe the rules will ensure property tax loans are provided fairly and sensibly to property owners." The current amendments replace a portion of a previously adopted rule that prohibited discount points in §89.601(d). The commission believes that the current amendments provide sufficiently clear guidelines to address the discount-point-related problems discussed earlier.

One commenter supported the rule, stating: "I applaud your office's continuing efforts to protect consumers of property tax loans. The proposed amendments are reasonable and will not negatively impact my business." However, this commenter suggested additional requirements. First, the commenter suggested: "Discount point charges must be paid up-front." The commission has addressed this suggestion through new §89.601(d)(4), which requires discount points to be paid by the borrower at or before closing of the loan, and provides that discount points may not be included in the funds advanced or principal balance. Second, the commenter suggested that the

"OCCC must demand customers receive fair and bona [fide] rate reductions from market rates," and that a "single discount point must have a minimum value of 25 basis points." The commission believes that the requirements for legitimate discount points in subsection (d) are sufficient to provide guidance on which discount points will be considered legitimate. The agency will monitor the industry's use of discount points to determine whether more detailed calculation requirements should be proposed in the future. The commission declines to add further discount point calculation requirements for this adoption. Third, the commenter suggested that the rule should require the originator to remit any discount points to a subsequent lienholder, stating: "Proceeds from discount points must be held by the ultimate lienholder, because a refund will have to be issued if the loan is satisfied early." The commission believes that this requirement would be outside the scope of §32.06(e), which does not address circumstances under which prepaid interest must be retained by an originating lender. Accordingly, the commission declines to incorporate this suggestion into the adoption. Fourth, the commenter suggested that all discount points should be subject to the \$900 fee cap described in §89.601(c)(3), stating: "It defeats the purpose of the fee cap if it can be easily exceeded through discount points." For the reasons discussed earlier, legitimate discount points are prepaid interest, and are therefore subject to the 18% interest limitation described in Texas Tax Code, §32.06(e), rather than the limitation on closing costs. However, the commission agrees that discount points should not serve as disguised closing costs. The new language in §89.601(d)(2) partially addresses the commenter's concern by specifying that lenders may not use the term "discount point" to describe any charge other than a legitimate discount point, and that any non-legitimate discount points are subject to the closing cost limitation. Fifth, the commenter suggested that lenders be required to provide the following disclosure: "Discount points are optional charges for your property tax loan. Other property tax lenders may offer similar rates without charging you fees for discount points. You should inquire [about] discount point policies from other licensed property tax lenders. Contact the Office of Consumer Credit Commissioner's Office should you have any questions, 800-538-1579." The commission believes that subsection (d)(1)(C) provides property owners with appropriate guidance about their options for discount points. The agency will continue to monitor this issue. The commission believes that a disclosure of the OCCC's contact information is unnecessary in the written proposal for discount points, because the borrower already receives this information under §89.504(a)(14) as part of the disclosure statement that must be provided to the borrower before closing.

One commenter supported the proposed recordkeeping and disclosure requirements, but opposed the prohibition on including discount points in the principal balance or funds advanced. The commenter argued that many borrowers are unable to pay for discount points up front, stating that "a property owner's ability to have quick access to cash, check or electronic funds transfer usually isn't part of why [they] need the transferees help. Many homeowners are already involved in a lawsuit with the taxing authorities--often facing imminent foreclosure. Some have found themselves in a bind after losing a job or with unexpected, urgent expenses. . . . [N]o matter how much a property owner wanted to utilize discount points--as expressly authorized by these rules--she would be prevented from doing so unless she had access to cash on hand." As discussed previously, discount points must be excluded from the principal balance and funds advanced, in order to ensure that the property tax lender does not violate the lim-

itation on funds advanced in Texas Tax Code, §32.06(e). For this reason, the commission disagrees with the commenter's suggestion to remove the prohibition on financing discount points. In response to the commission's statement that lenders could recoup costs of compliance by charging a higher rate of interest, the commenter also stated that the amendments would "provide a justification for the increase in industry interest rates." The commission disagrees with this comment. Property tax lenders are still free to offer lower interest rates than their competition. A property tax lender that currently offers financed discount points at lower-than-market rates could provide substantially the same benefit by offering an interest rate without discount points that is lower than competitors' rates. This approach would have the added benefits of ensuring that the discount points are not disguised closing costs, ensuring that the lender does not violate the limitation on funds advanced, and providing clearer, more transparent information to the borrower.

#### *IV. Conclusion*

The amended provisions in this adoption will apply only to loans made on or after the effective date of these rules, which is anticipated to be July 9, 2015.

### **SUBCHAPTER B. AUTHORIZED ACTIVITIES**

#### **7 TAC §89.207**

The amendments are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. The amendments help ensure that lenders comply with the limitations on interest, closing costs, and funds advanced in Texas Tax Code, §32.06(e). They also help ensure that lenders comply with Texas Finance Code, §351.0021(c)(2), which prohibits property tax lenders from charging any interest that is not expressly authorized under Texas Tax Code, §32.06. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Enforcement authority under Title 4 includes the authority to enforce Texas Tax Code, §32.06, as provided by Texas Finance Code, §351.006(a).

The amendments are also adopted under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under §32.06. By requiring discount points to be legitimate prepaid interest rather than disguised closing costs, the amendments help ensure that the charges imposed by the lender are reasonable.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06.

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502350

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Effective date: July 9, 2015  
Proposal publication date: May 1, 2015  
For further information, please call: (512) 936-7621



### **SUBCHAPTER F. COSTS AND FEES**

#### **7 TAC §89.601**

The amendments are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. The amendments help ensure that lenders comply with the limitations on interest, closing costs, and funds advanced in Texas Tax Code, §32.06(e). They also help ensure that lenders comply with Texas Finance Code, §351.0021(c)(2), which prohibits property tax lenders from charging any interest that is not expressly authorized under Texas Tax Code, §32.06. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Enforcement authority under Title 4 includes the authority to enforce Texas Tax Code, §32.06, as provided by Texas Finance Code, §351.006(a).

The amendments are also adopted under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under §32.06. By requiring discount points to be legitimate prepaid interest rather than disguised closing costs, the amendments help ensure that the charges imposed by the lender are reasonable.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06.

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502351  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Effective date: July 9, 2015  
Proposal publication date: May 1, 2015  
For further information, please call: (512) 936-7621



### **SUBCHAPTER H. PAYOFF STATEMENTS**

#### **7 TAC §89.802**

The amendments are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06. The amendments help ensure that lenders comply with the limitations on interest, closing costs, and funds advanced in Texas Tax Code, §32.06(e). They also help ensure that lenders comply with Texas Finance Code,



§351.0021(c)(2), which prohibits property tax lenders from charging any interest that is not expressly authorized under Texas Tax Code, §32.06. Additionally, the amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Enforcement authority under Title 4 includes the authority to enforce Texas Tax Code, §32.06, as provided by Texas Finance Code, §351.006(a).

The amendments are also adopted under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under §32.06. By requiring discount points to be legitimate prepaid interest rather than disguised closing costs, the amendments help ensure that the charges imposed by the lender are reasonable.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06.

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502352

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: July 9, 2015

Proposal publication date: May 1, 2015

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



## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 10. UNIFORM MULTIFAMILY RULES

#### SUBCHAPTER F. COMPLIANCE MONITORING

#### 10 TAC §§10.607, 10.622, 10.623

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to Chapter 10, Subchapter F, §10.607, concerning Reporting Requirements; §10.622, concerning Special Rules Regarding Rents and Rent Limit Violations; and §10.623, concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period. Section 10.607 and §10.622 are adopted without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2362). Section 10.623 is adopted with non-substantive changes and will be republished.

**REASONED JUSTIFICATION.** The purpose of the amendments is to codify guidance issued by the Internal Revenue Service into the Department's Compliance Monitoring Rules and to correct an error that resulted from the previous rulemaking cycle.

#### SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Comments were accepted from May 1, 2015, through June 1, 2015, with comments received from Debra Schneider on behalf of Sandalwood Management, Inc.

**COMMENT SUMMARY:** §10.623(c)(1) - The commenter recommended that the Department delete the second sentence of the paragraph which states "*If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments).*" The commenter suggests that the rule is inconsistent with the Code, contrary to the practice of the IRS and many other states, and undermines public policy. The commenter references §42(i)(3)(D) and states that the rule is patently inconsistent with the code and that the rule serves no apparent purpose but effectuates a barrier to low income students to access affordable housing.

**STAFF RESPONSE:** Staff disagrees and no change is recommended. Deleting the sentence would be in direct conflict with program requirements as it would allow Housing Tax Credit properties that have completed the Compliance Period to lease all units to student households which would, in effect, limit the availability of low income units for all low income households.

Owner of Housing Tax Credit properties commit to maintain affordability for, at least, 30 years by executing an Extended Use Agreement, also known as a LURA. During the first 15 years ('the Compliance Period') noncompliance is reported to the Internal Revenue Service ("IRS") and owners are subject to recapture. After year 15, the tax benefit to the owner is exhausted and IRS can no longer recapture or disallow credits. Therefore, the State Housing Finance Agency can establish policies regarding how properties are monitored and consequences for noncompliance during the remainder of the Extended Use Period ("Post Year 15" monitoring).

Amongst other federally required provisions, the LURA must specifically 1) Specify that the applicable fraction for the building for each year in the extended use period will not be less than the applicable fraction in the agreement; and which prohibits the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or any increase in the gross rent with respect to such unit not otherwise permitted and 2) Allow individuals (whether prospective, present, or former occupants) who meet the income limitation applicable to the building, the right to enforce in state court certain terms of the LURA, including maintaining the applicable fraction and prohibiting the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or any increase in the gross rent with respect to such unit not otherwise permitted. These prohibitions apply throughout the extended use period.

The building's applicable fraction represents the percentage of low income units required in that building. For a unit to count towards the building's applicable fraction, the unit must be a qualified low income unit. In accordance with §42(i)(3)(D), units comprised entirely with full-time students do not qualify as low-income units unless the household can evidence that they meet one of five (5) Congressionally approved exceptions: 1) receiving assistance under Title IV of the Social Security Act; 2) previously in foster care placement; 3) enrolled in a job training pro-

gram the Job Training Partnership Act or under other similar Federal, State or local laws; 4) single parent and their children where none of the members are dependents of a third party (other than the noncustodial parent for the children); and 5) married and entitled to file a joint tax return. The program does not prohibit leasing units to qualified student households. The commenter's reference that a "ban" on marketing to students and the 15% "cap" is patently inconsistent with §42(i)(3)(D) is both a misinterpretation of the code and the rule.

In connection with the LURA, the Department also creates rules to outline the monitoring process for Post 15 monitoring. Specific to the paragraph in question, (c)(1), the rule was amended on December 8, 2011 to add the provision requiring owners to request a material amendment to their LURA if more than 15% of the total units are occupied with students or if the property would like to market to students.

Prior to this change, §10.622(c) read *After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection. (1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low Income Unit.* At the time, the intention of staff was to allow income qualified households consisting entirely of full time students to occupy a low income unit without regard for documentation of the household meeting an exception; however, it was too broadly worded. Staff re-evaluated the rule and proposed the language as it reads today. During the same rulemaking process, the Department introduced the Material Amendment to Land Use Restriction Agreements detailing how an Owner could seek to amend the LURA. The 15% threshold was chosen because, given the vast range in development sizes, 15% seemed manageable for owners, negligible when accessing overall compliance and, given the introduction of the Material Amendment process, the Owner has a separate option to explore expansion on a case by case basis. The Department is not aware of any public policy this rule undermines; in fact, we believe that the rule promotes and preserves housing for low income households, the mission of the Department and the Low Income Housing Tax Credit Program.

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

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

§10.623. *Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.*

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department request;

(2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all

building systems and 10 percent of Low-Income Units. No less than five but no more than thirty-five of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this chapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years. *Example 623(1):* The Development's LURA states "The Compliance Period shall be a period of 20 consecutive taxable years and the Extended Use Period shall be a period of 35 consecutive taxable years, each commencing with the first year of the Credit Period." In this scenario, the Additional Use Restrictions prescribed in the LURA are applicable through year 20, but since the Federal Compliance Period has ended, the Development will be monitored under this section;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units can be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (5) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time

students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments).

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with paragraph (b)(13) of this section; and

(5) The Department will not monitor whether rent is being charged for an employee occupied unit.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year fifteen (15) in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year Fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

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

Filed with the Office of the Secretary of State on June 22, 2015.

TRD-201502388

Timothy K. Irvine  
Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 12, 2015

Proposal publication date: May 1, 2015

For further information, please call: (512) 475-2330



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 163. LICENSURE

##### 22 TAC §163.6

The Texas Medical Board (Board) adopts amendments to §163.6, concerning Examinations Accepted for Licensure, without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2465). The section will not be republished.

The amendment revises the language in subsection (b)(3)(A) - (D) to clarify exemptions relating to Examination Attempt Limit as it relates to licenses held in other states.

No comments were received regarding adoption of the amendment.

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

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502334

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



## CHAPTER 166. PHYSICIAN REGISTRATION

### 22 TAC §166.2

The Texas Medical Board (Board) adopts amendments to §166.2, concerning Continuing Medical Education, without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2467). The section will not be republished.

The amendment adds the word "physician" to subsection (e)(1) - (4) in order to clarify that the exemption reasons must be those of the "physician" and not anyone else, such as a family member. The rule is further amended in that all references to "licensee" are changed to "physician" in order to be consistent throughout the rule.

No comments were received regarding adoption of the amendment.

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

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502335

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



## CHAPTER 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

## 22 TAC §180.4

The Texas Medical Board (Board) adopts amendments to §180.4, concerning Operation of Program, without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2472). The section will not be republished.

The amendments eliminate the prohibitions on eligibility for referrals made regarding individuals that have violated the standard of care as a result of the use or abuse of drugs or alcohol, committed a boundary violation with a patient or patient's family member(s), or been convicted of or placed on deferred adjudication community supervision or deferred disposition for a felony. Further amendments add language providing that the Medical Board may refer such individuals publicly through the entry of an order that addresses the standard of care, boundary, and/or criminal law related violations. In the event of such a referral, the Medical Board retains the authority to discipline the individuals for the standard of care, boundary, and criminal law related violations.

No comments were received regarding adoption of the amendment.

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

The amendment is also authorized by Chapter 167, Texas Occupations 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 June 19, 2015.

TRD-201502336

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



## CHAPTER 183. ACUPUNCTURE

### 22 TAC §183.4, §183.6

The Texas Medical Board (Board) adopts amendments to §183.4, concerning Licensure, and §183.6, concerning Denial of Licensee; Discipline of License, without changes to the proposed text as published in the March 13, 2015, issue of the *Texas Register* (40 TexReg 1350). The sections will not be republished.

The amendment to §183.4 pertains to the addition of subsection (a)(10), Alternative License Procedure for Military Spouse. The amendment is made to allow alternative demonstration of competency for certain licensing requirements for military spouses as required by Texas Occupations Code, §55.004.

The amendment to §183.6 adds subsection (e), relating to Informal Board Proceedings Relating to Licensure Eligibility. The

amendment is made to clarify the Acupuncture Board's authority to impose non-disciplinary remedial plans as a condition of licensure.

No comments were received regarding adoption of the amendments.

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

The amendments are also authorized by Texas Occupations Code Annotated §205.101.

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502337

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: March 13, 2015

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



## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to §187.13, concerning Informal Board Proceedings Relating to Licensure Eligibility, and §187.24, concerning Pleadings, without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2475). The sections will not be republished.

The amendments to §187.13 revise subsection (c)(1), (4)(A) and (B) by making a case change in the word "Board". The rule is further amended in subsection (c)(3)(B)(ii) by adding a 20 day deadline for accepting offers of the committee and changing the word "determined" to "deemed". The rule is also amended in subsection (c)(4)(A) by adding the words "deemed ineligibility" to further clarify what qualifies as "ineligible" and further describe the possible situations to which the subsection applies. Subsection (c)(4)(B) is further amended to change the word "will" to "shall" in order to be consistent with the remainder of the rules. Subsection (c)(4)(E) is amended by eliminating the words "submitted to the board for ratification" and adding language that the committee's determination of ineligibility shall be deemed accepted by the applicant without the need for resubmitting such deemed acceptance to the full board for ratification.

The amendment to §187.24 revises subsection (b)(1) by making a case change in the word "Board". The rule is further amended in subsection (b)(5) by eliminating the words "submitted to the board for ratification" and adding language that provides that the committee's determination of ineligibility shall be deemed accepted by the applicant without the need for resubmitting such deemed acceptance to the full board for ratification.

No comments were received regarding adoption of the amendments.

## SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

### 22 TAC §187.13

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

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502338

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



## SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

### 22 TAC §187.24

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

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

Filed with the Office of the Secretary of State on June 19, 2015.

TRD-201502340

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to §§187.43, 187.61, 187.70, and 187.72 and the repeal of §187.73, concerning Procedural Rules, without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2475). The sections will not be republished.

The amendments to §187.43, concerning Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders, clarify the requirements related to a probationer's eligibility

for submitting a petition to the board requesting modification or termination of an order. Language under subsection (e) providing that probationers who have been notified in writing regarding an investigation initiated by the board on issues of noncompliance may not have requests for modification or termination of the order considered is deleted and replaced with language providing that if a probationer is not in active practice or is the subject of a board investigation or pending action, he or she may not have requests for modification or termination considered until such issues are resolved, which is moved to new subsection (g). Further, new subsection (f) is added providing the factors that will be reviewed in the determination of whether probationers are in "full compliance" with the terms and conditions of their orders.

Current subsection (f) is re-lettered to subsection (h), and language is added providing that if prior to the date of the meeting scheduled for the purpose of considering the petition, the probationer becomes the subject of a board investigation, the petition will be withdrawn and the meeting will be cancelled, and for such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board investigation and board action, if any, is resolved.

Remaining amendments re-letter provisions to account for reorganized and added subsections.

The amendments to §187.61, concerning Ancillary Proceeding, reorganizes language under subsection (b) so that certain language under subsection (b)(2) is moved to new subsection (c) and further modified to clarify that in cases of suspension based upon arrest for certain offenses listed under §164.1595 of the Texas Occupations Code and §187.57(d) of this title (relating to Charge of the Disciplinary Panel), final dispositions of criminal cases may include a deferred adjudication, acquittal, dismissal of the criminal case, or plea agreement, in addition to a court order of guilt and sentence.

Existing subsection (c) is re-lettered to subsection (d), with language added clarifying that in the case of a suspension or restriction under new subsection (c), an ISC must be scheduled as soon as practicable after there is a final disposition of the criminal case.

Remaining amendments re-letter provisions to account for reorganized and added subsections.

The amendments to §187.70, concerning Purposes and Construction, add language clarifying that an adjudication of guilt of the offense charged includes but is not limited to a finding of guilt by a judge or jury. For purposes of §187.70, the Board interprets the term initial conviction, under Chapter 167 of the Occupations Code, to mean an adjudication of guilt, and the suspension of the medical license is mandated upon an initial conviction of certain criminal offenses listed in §164.057.

The amendments to §187.72, concerning Decision of the Panel, delete language in subsection (a) providing that an order of suspension by operation of law represents an imminent peril to the public health, safety, or welfare and requires immediate effect and is considered administratively final for purposes of appealing the decision to district court. Further amendments to subsection (a) insert citations to the applicable sections of §164.057, which mandate suspension upon an initial conviction. Remaining amendments to subsections (a) and (b) represent general cleanup and reorganization of language.

Section 187.73, concerning Termination of Suspension, is repealed. The section is redundant, in that termination of the suspension would be governed by the terms of the agreed order probating the suspension. The Board also believes that the rule cited is an incorrect standard for determining if a suspension should be terminated, specifically, physical and mental competence to practice medicine. This standard is not relevant to the underlying basis of the suspension, which is criminal conduct that the legislature determined poses a risk to a physician's patients, requiring suspension of the physician's medical license. Physical and mental competence do not mitigate such a risk.

No comments were received regarding adoption of the amendments and repeal.

## SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

### 22 TAC §187.43

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

The amendment is also authorized by Chapter 164, Texas Occupations 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 June 19, 2015.

TRD-201502341

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



## SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

### 22 TAC §187.61

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

The amendment is also authorized by Chapter 164, Texas Occupations 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 June 19, 2015.

TRD-201502342

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



## SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

### 22 TAC §187.70, §187.72

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

The amendment is also authorized by Chapter 164, Texas Occupations 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 June 19, 2015.

TRD-201502343

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



### 22 TAC §187.73

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

The repeal is also authorized by Chapter 164, Texas Occupations 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 June 19, 2015.

TRD-201502344

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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



## CHAPTER 189. COMPLIANCE PROGRAM

### 22 TAC §189.7

The Texas Medical Board (Board) adopts amendments to §189.7, concerning Modification/Termination Hearings, without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2480). The section will not be republished.

The amendments clarify the requirements related to a probationer's eligibility for submitting a petition to the board requesting modification or termination of an order. Language is added to subsection (a) providing that a probationer must be in full compliance with all the terms and conditions of his or her order to be eligible for the board to consider modification or termination of an order unless the modification or termination relates to the factors outlined in §187.43(d)(2) of this title (relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders).

Language is added to subsection (b) providing that if prior to the date of the meeting the probationer becomes the subject of a board investigation, the petition will be withdrawn and the meeting will be cancelled. Language is further added stating that for such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board investigation and board action, if any, is resolved. Remaining amendments to subsection (b) represent cleanup of the rule.

Language is amended in subsection (d) referencing parallel proposed amendments under §187.43 of the title to ensure consistency between the board rule sections. Remaining amendment to subsection (d) represent general cleanup and reorganization of language.

Amendments to subsection (e) delete paragraph (2) to correctly reflect that the existence of a pending investigation would prohibit the panel's consideration of a petition for modification, termination, or reinstatement. Remaining amendments represent general cleanup.

New subsection (f) is added providing that if the modification or termination request is recommended by a board panel to be granted, but prior to full board review or approval the probationer becomes the subject of a board investigation, the panel's recommendation will be withdrawn from the board's consideration for approval, and that for such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board's investigation and board action, if any, is resolved.

Remaining amendments represent re-lettering of the subsections subsequent to new (f).

No comments were received regarding adoption of the amendments.

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

The amendment is also authorized by Chapter 164, Texas Occupations 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 June 19, 2015.

TRD-201502345

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: July 9, 2015

Proposal publication date: May 8, 2015

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

## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS DIVISION 1. GENERAL PROVISIONS

##### 28 TAC §34.303

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §34.303, concerning adopted standards for inspections by the state fire marshal. The amendments are adopted with changes to the proposal published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9801).

Government Code §417.008 authorizes the state fire marshal to enter, on the complaint of any person, any building or premises in the state at any reasonable time to examine the structure for certain dangerous conditions. Government Code §417.008 also authorizes the commissioner of insurance to adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the state fire marshal may enforce §417.008. The standards adopted by rule do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area.

Section 34.303, which adopts by reference certain standards and recommendations of the National Fire Protection Association (NFPA), is amended to adopt the 2012 NFPA 1 Fire Code. The NFPA is a nationally recognized standards-making association.

TDI published an informal draft of the proposed rules on July 24, 2014. The proposal was published in the December 19, 2014 issue of the *Texas Register*. On January 20, 2015, TDI held a hearing on the proposal. There were no commenters appearing at the hearing. TDI received four written comments on the proposal.

##### REASONED JUSTIFICATION.

The adoption of the NFPA 1 Fire Code is necessary to provide state fire marshal inspectors with a more comprehensive standard than is currently adopted in §34.303. The NFPA 1 Fire Code is a comprehensive fire code produced by NFPA, a na-

tionally recognized standard-making association. The NFPA 1 Fire Code references other NFPA standards to provide a comprehensive set of standards to guide inspectors, so it is similar to the International Fire Code that most municipalities in Texas use. The NFPA 1 Fire Code allows all the systems and components in a building to be reviewed for compliance with best practices to prevent a fire, and, if a fire occurs, provides requirements for extinguishing and confining a fire, egress of occupants, and requirements to minimize risk exposure for people in the structure and in the surrounding community. The standard allows fire inspectors to assess the sufficiency of fire sprinklers, egress of occupants, compliance with electrical standards, need for fire extinguishers, and storage of products that cause increased fire hazards.

HB 1951, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011, amends Government Code §417.0081 to modify the fire safety examination duties of the state fire marshal. The broad range of occupancies the state fire marshal inspects includes residential dormitories, health facilities, laboratories, warehouses, and other occupancies that contain fire protection dangers not adequately addressed by the NFPA 101 Life Safety Code, which has been the standard preceding this adoption. Generally, the NFPA 101 Life Safety Code is limited to standards related to the safety of occupants, but the NFPA 1 Fire Code is a more comprehensive set of standards focusing on property protection, as well as occupant safety.

The adopted amendments do not create a statewide fire code nor do they authorize the state fire marshal to assess fines, require building plan reviews, or grant permits.

A copy of the NFPA 1 Fire Code is available for public inspection in the State Fire Marshal's Office. The NFPA also makes the Code available online at [www.nfpa.org](http://www.nfpa.org). To view NFPA standards on the NFPA website, users must create a free account and agree to certain terms and conditions.

TDI has made changes to the proposed amendments to clarify which chapters of the NFPA 1 Fire Code are not applicable for use by the state fire marshal. Because the state fire marshal does not conduct plan reviews, issue permits, or take administrative actions relating to land development, those sections have been specifically excluded from this adoption order. The nonsubstantive changes clarify what was already true of the proposed amendment.

#### SUMMARY OF COMMENTS AND AGENCY RESPONSE.

TDI received four written comments and no oral comment. The commenters were International Code Council, Travis County Fire Marshal, Texas Association of Builders, and University of Texas System. One commenter was for the adoption of the rule. Two commenters were for adoption of the rule with changes. One commenter was against the adoption of the rule.

**Comment on Benefits of Adopting a Fire Code.** One commenter states that fire prevention is important for the citizens of Texas and that having a recognized and enforceable standard across the state will create a safer environment for businesses, the public, and firefighters. The commenter also states that some businesses seek to avoid municipal fire codes and have located outside of incorporated areas to avoid an adopted code for fire prevention.

**Agency Response.** TDI appreciates the comment. TDI emphasizes that the adopted fire code is for use with examinations that

state fire marshal inspectors conduct. The adopted fire code does not establish a statewide fire code, and the State Fire Marshal's Office does not conduct plan review or issue building permits.

**Comments on Adopting the International Fire Code (IFC).** Two commenters express support for the adoption of a comprehensive fire code for State Fire Marshal Office examinations, but would prefer the adoption of the IFC. Both commenters state that IFC is a well-developed fire code to ensure fire protection. One commenter reminds TDI that the Local Government Code requires the adoption of the International Residential Code (IRC) and the International Building Code (IBC) if a municipality adopts a building code. The commenter also reminds TDI of the use of the IFC by counties with a sufficient population to adopt a fire code. Both commenters state the benefit of adopting a fire code that is part of the "I-code family." The IRC, IBC, and IFC have been drafted to minimize issues and conflicts in building code construction requirements and fire code requirements. Both commenters state that there may be higher cost implications with adopting the NFPA 1 Fire Code instead of the IFC.

**Agency Response.** The majority of examinations the state fire marshal inspectors conduct are in state-owned buildings. The state does not require these buildings to be built to either IRC or IBC standards, because state buildings are exempted from most local land use regulations. The State Fire Marshal's Office does not routinely conduct examinations of private property unless another regulatory requirement exists for a state fire marshal inspection, such as licensed childcare facilities where no local authority has jurisdiction to provide the necessary inspection. Where code violations are found, the state fire marshal will require remedial action. Inspectors look for conditions that are dangerous or likely to cause or promote a fire, or conditions that create danger for fire fighters, occupants, or other buildings or structures.

State fire marshal inspectors are familiar with inspecting premises within a jurisdiction that has adopted one or more parts of the "I-code family" for building and fire code purposes. The State Fire Marshal's Office examines state-leased facilities, which sometimes fall within the jurisdiction of local government. In these instances, state fire marshal inspectors have experience applying the state-adopted fire standards (currently the NFPA 101 Life Safety Code) to structures built to IRC or IBC standards and that are located within a jurisdiction that has adopted the IFC as its fire code. The standards adopted by the State Fire Marshal for inspections are not building codes, and are not meant to replace land use regulation by local governments. State fire marshal inspectors' training in NFPA codes is compatible with the other applicable codes. The kinds of threats to life and property that state fire marshal inspectors are trying to mitigate and prevent are recognized as hazards under both NFPA and IFC codes.

The State Fire Marshal's Office has significant experience in applying the NFPA 101 Life Safety Code, and adopting the related NFPA 1 Fire Code will require less training and less expense to TDI. The state fire marshal prefers adoption of the NFPA 1 Fire Code because the inspectors are already trained and familiar with the NFPA 101 Life Safety Code. The NFPA 1 Fire Code and NFPS 101 Life Safety Code are mutually referencing, and are designed to be used together. The move to the more comprehensive NFPA 1 Fire Code requires less inspector training because the inspectors are already familiar with the closely related NFPA 101 Life Safety Code. The state fire marshal has



already adopted other NFPA codes for specific fire protection life-safety licensing issues for fire extinguisher, fire alarm, fire sprinkler, and fireworks regulations. These rules can be found in 28 TAC Chapter 34, Subchapter E, F, G, and H, respectively. In addition, several state university systems and campuses have already adopted the NFPA 1 Fire Code for internal use. By also adopting the NFPA 1 Fire Code, the State Fire Marshal's Office may realize efficiency gains in having its inspectors and licensing investigators familiar with the same family of codes.

The state fire marshal is only able to order corrections of dangerous conditions or other remedial actions for hazards to life or property. In these instances, the differences between the IFC and NFPA 1 Fire Code are unlikely to be meaningful. It is also unlikely that a premises that is fully compliant with the IRC, IBC, and IFC would require the state fire marshal to order the correction of a dangerous condition. If a situation arose where the NFPA 1 Fire Code and IRC, IBC, or IFC conflict, the adopted NFPA 1 Fire Code provides the necessary flexibility through allowing equivalencies, alternatives, and modifications. The adoption of the NFPA 1 Fire Code allows inspectors to use their experience and discretion to allow reasonable equivalencies, alternatives, and modifications. This use of discretion mitigates the potential cost discrepancy between the NFPA 1 Fire Code and other similar fire or building codes. In many instances, full compliance with IFC, IBC, IRC, or other fire codes provide persuasive evidence that the conditions are sufficient to provide for adequate public safety. At this time, and for the reasons stated above, TDI adopts the NFPA 1 Fire Code.

Comments on Implications of Adopting NFPA 1 Fire Code in University Facilities. One commenter expressed concern over the adoption of the NFPA 1 Fire Code without additional discussion and analysis. The commenter stated that it has concerns over compliance for university laboratories and health care facilities, particularly with respect to the retroactivity of the standards related to new equipment. The commenter stated that it is routine for laboratories to acquire and install new equipment on a continual basis, and that if these changes triggered a retroactive application, the complexity and cost of complying with the proposed standard could be significant. The commenter also expressed concern with how the state fire marshal inspectors would interpret the NFPA 1 Fire Code Chapter 60 Hazardous Materials requirements for working laboratories. The commenter expressed concern with other NFPA 1 Fire Code chapters, including Chapters 16, 18, 21, 23, 25, 28, 29, 30, 32, 34, 35, and 36. The commenter stated the need for additional time and further discussion before TDI adopts the NFPA 1 Fire Code as the standard.

Agency Response. TDI agrees that university working laboratories and other facilities require individual analyses to determine their compliance with the NFPA 1 Fire Code, particularly as new laboratory equipment is installed. The state fire marshal has worked with various university systems to analyze the potential effect of the NFPA 1 Fire Code on university buildings and structures. In response to comment, the adoption of the NFPA 1 Fire Code includes an exception that Chapter 60 Hazardous Materials will not be applied to university and health care facility laboratories. TDI declines to make further changes or delay the adoption of the NFPA 1 Fire Code. However, the state fire marshal stresses that the NFPA 1 Fire Code includes provisions that allow inspectors to use their experience, judgment, and experience to allow for reasonable accommodations through equivalencies, alternatives, and modifications. These provisions allow for flexibility to accommodate the unique circumstances of university and health care laboratory environments, while keeping

in mind public health and safety standards and adhering to Government Code §417.008.

The standards adopted with the NFPA 1 Fire Code provide additional information about retroactively applying the Code to existing conditions. NFPA 1 Fire Code retroactivity is the same as the already adopted NFPA 101 Life Safety Code, and the codes complement each other in how they prescribe the minimum requirements to establish a reasonable level of protection from fire, life safety, and property protection hazards. The State Fire Marshal's Office has been applying the NFPA 101 Life Safety Code, including its retroactivity provisions, in its inspections. Retroactivity only applies where specifically required by the adopted fire code. For example, NFPA 101 Life Safety Code Chapter 1.3.2.4.1 provides that "where specified by a reference standard for existing occupancies, conditions, or systems, the provisions of the referenced standards shall be retroactive." Similarly, NFPA 1 Fire Code Chapter 1.3.2.4.2 provides that "facilities, equipment, structures, and installations, installed in accordance with a reference standard, shall be maintained in accordance with the edition of the standard in effect at the time of installation." As with other specific requirements, NFPA 1 Fire Code Chapter 1.4, Equivalencies, Alternatives, and Modifications provides that the state fire marshal, as the relevant authority having jurisdiction, can allow reasonable accommodations.

With respect to rehabilitation or remodeling, the state fire marshal can assist property owners and operators with finding reasonable equivalencies, alternatives, and modifications to achieve rehabilitation and meet the requirements and intent of the adopted code. Where there are practical difficulties that prevent the university's facilities management from carrying out the provisions of the NFPA 1 Fire Code during rehabilitation or remodeling, the state fire marshal can provide information to allow for flexibility while still providing reasonable protections. The state fire marshal is committed to working closely with staff at the state's universities to ensure safe conditions by applying adopted standards in a reasonable manner.

With respect to other occupancies, the state fire marshal intends to interpret provisions of the NFPA 1 Fire Code as adopted, while also allowing for equivalencies, alternatives, and modifications as necessary.

*Business Occupancies* - New and existing business occupancies, which constitute the majority of university academic buildings, must comply with NFPA 1 Fire Code, Chapter 20.13 and NFPA 101 Life Safety Code. NFPA 101 Life Safety Code, Chapter 38/39.3.2.1 refers to 8.7 and NFPA 45, Standard on Laboratories Using Chemicals.

*Health Care Occupancies* - New and existing health care occupancies must comply with NFPA 1 Fire Code, Chapter 20.4.1; NFPA 101 Life Safety Code; and NFPA 99, Health Care Facilities Code. NFPA 101 Life Safety Code, Chapter 18/19.3.2.2 refers to the NFPA 99, Health Care Facilities Code.

*Chapter 16, Safeguarding Construction, Alteration and Demolition* - NFPA 101 Life Safety Code, Chapter 4.6.10 provides for equivalent safeguards in comparison to the NFPA 1 Fire Code for buildings undergoing construction and alterations.

*Chapter 18, Fire Department Access and Water Supply* - The intent is for universities to reach out to local fire officials and work together to determine any particular requirements for fire department access and water supply, and that they find mutual solutions to resolve any specific issues.

*Chapter 21, Airports and Heliports* - Refers compliance to the NFPA 101 Life Safety Code and applicable sections of Chapter 40 and Chapter 42.

*Chapter 23, Cleanrooms* - Refers compliance to NFPA 318 Standard For The Protection Of Semiconductor Fabrication Facilities with exceptions.

*Chapter 25, Grandstands, Bleachers, Tents and Membrane Structures* - Refers compliance to the NFPA 101 Life Safety Code. Specific provisions are referenced in Chapter 11, Chapter 12 and Chapter 13.

*Chapter 28, Marinas, Boatyards, Marine Terminals, Piers, Wharves* - Compliance prescribed per occupancy chapter, NFPA 101 Life Safety Code. Chapter 11 has provisions related to piers.

*Chapter 29, Parking Garages* - Refers compliance to NFPA 101 Life Safety Code, Section 42.8 and NFPA 88-A Standard for Parking Structures.

*Chapter 30, Motor Fuel Dispensing Facilities and Repair Garages* - Compliance is within scope of the NFPA 30 Flammable and Combustible Liquids Code and NFPA 30-A Code For Motor Fuel Dispensing Facilities and Repair Garages as adopted by state fire marshal rules under Health and Safety Code Chapter 753.

*Chapter 32, Motion Picture and Television Production Studios, Soundstages, and Approved Production Facilities* - Compliance prescribed per occupancy chapter and reference to the NFPA 140 Standard On Motion Picture And Television Production Studio Soundstages, Approved Production Facilities, and Production Locations as applicable.

*Chapter 34, General Storage* - Compliance prescribed per occupancy chapter. Typical university storage occupancies do not contain the type of commodities referenced in this chapter and in most cases already meet compliance with NFPA 101 Life Safety Code, Chapter 42.

*Chapter 35, Animal Housing Facilities* - Compliance is prescribed per reference to the NFPA 150 Standard On Fire And Life Safety In Animal Housing Facilities as applicable for existing buildings.

*NFPA 150 Standard On Fire And Life Safety In Animal Housing Facilities, Chapter 1.3.3* - This standard also applies to existing facilities in which any one of the following conditions exists: (1) a change of use or occupancy classification occurs where animals are introduced; (2) a change is made in the sub-classification or category of the animals housed; (3) a renovation, modification, reconstruction, or addition is made; (4) a building or structure with an animal housing facility is relocated; (5) a building with an animal housing facility is considered damaged, unsafe, or a fire hazard; (6) a property line that affects compliance with any provision of this standard is created or relocated.

*NFPA 150 Standard On Fire And Life Safety In Animal Housing Facilities, Chapter 1.4.1* - Unless otherwise specified, the provisions of this standard do not apply to facilities, equipment, structures, or installations that existed or were approved for construction or installation prior to the effective date of the standard. Where specified, the provisions of this standard are retroactive.

*Chapter 36, Telecommunication Facilities and Information Technology Equipment* - Compliance prescribed per occupancy chapter and reference to the NFPA 75 Standard For The Fire Protection Of Information Technology Equipment as applicable.

The state fire marshal recognizes that cases may arise that can present unusual or extraordinary circumstances and challenges for compliance with certain provisions of the code. In these cases, it is the intent the state fire marshal to determine an acceptable solution that offers a reasonable but equivalent method of compliance for the particular condition.

#### STATUTORY AUTHORITY

The amendment is adopted under Government Code §§417.005, 417.008, 417.0081, and Insurance Code §36.002 and §36.001. Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner. Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the commissioner by rule shall adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Insurance Code §36.002 provides that the commissioner may adopt reasonable rules that are appropriate to accomplish the purposes of a provision of Government Code §417.008. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

#### §34.303. *Adopted Standards.*

(a) The commissioner adopts by reference:

(1) NFPA 1-2012 Fire Code, except for

(A) Chapter 1 Administration, to the extent that subsections 1.6 Enforcement, 1.7 Authority, 1.8 Duties and Powers of the Incident Commander, 1.9 Liability, 1.10 Fire Code Board of Appeals, 1.11 Records and Reports, 1.12 Permits and Approvals, 1.13 Certificates of Fitness, 1.14 Plan Review, and 1.16 Notice of Violations and Penalties do not apply to State Fire Marshal inspections;

(B) Chapter 30 Motor Fuel Dispensing Facilities and Repair Garages, to the extent it conflicts with standards adopted in Subchapter A of this chapter and Health and Safety Code Chapter 753;

(C) Chapter 60 Hazardous Materials, to the extent it will not be applied to laboratories and laboratories in health care occupancies; and

(D) Chapter 65 Explosives, Fireworks, and Model Rocketry, to the extent it conflicts with subchapter H of this chapter and Occupations Code Chapter 2154;

(2) NFPA Life Safety Code 101-2012;

(b) These copyrighted standards and recommendations are adopted for inspections performed under Government Code §417.008, except to the extent they are in conflict with sections of this chapter or any Texas statutes or federal law. The standards are published by and are available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269. A copy of the standards is available for public inspection in the State Fire Marshal's Office.

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

Filed with the Office of the Secretary of State on June 16, 2015.

TRD-201502279

Sara Waitt

General Counsel

Texas Department of Insurance

Effective date: July 6, 2015

Proposal publication date: December 19, 2014

For further information, please call: (512) 676-6584



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

##### SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

###### 31 TAC §371.42

The Texas Water Development Board (TWDB) adopts amendments to Chapter 371, Drinking Water State Revolving Fund, §371.42, relating to the issuance of categorical exclusions pursuant to the National Environmental Policy Act, 42 U.S.C. Chapter 55; and more specifically, pursuant to 40 C.F.R., Ch. 1, Subchapter A, Part 6, Procedures for Implementation. The proposal is adopted with one non-substantive change as published in the April 10, 2015, issue of the *Texas Register* (40 TexReg 2074).

###### DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts the amendment that will more precisely conform the board's rule to the federal procedures for implementation of the National Environmental Policy Act. The same amendment was proposed in 31 TAC §375.52 and §375.62, relating to Types of Environmental Determinations: Categorical Exclusions in the board's Clean Water State Revolving Fund rules. In addition to the alignment of the board's rules to the federal procedures, the adopted amendment will make all of the board's state revolving fund rules related to categorical exclusions uniform.

###### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

31 TAC §371.42 will more closely track the language related to categorical exclusions and extraordinary circumstances contained in the federal procedures for implementation of the National Environmental Policy Act. The amendment clarifies the circumstances under which a categorical exclusion may be available. The amendment also clarifies the types of projects that are not eligible for categorical exclusions and identifies extraordinary circumstances which may cause a project to be ineligible. In general, the amendment provides more latitude for the executive administrator to grant categorical exclusions, while still maintaining compliance with the federal law. The amendment also modifies the information that Applicants must provide to the executive administrator in order to demonstrate that the project is eligible for a categorical exclusion. The intent of this revision is to attain meaningful information from Applicants that may be used in the environmental review process.

Specifically, under the adopted amendments, the construction of new minor ancillary facilities that affect the degree of treatment or the capacity of the works may be eligible for a categorical exclusion provided that they do not involve a new or relocated discharge to surface or ground water, a substantial increase in the volume or loading of pollutant to the receiving water, and do not provide capacity to serve a population 30% greater than the existing population. In addition, the rule has been broadened to include as eligible for a categorical exclusion the construction of new minor ancillary facilities on property located directly adjacent to existing facilities. These modifications align the board's rule with the federal rule.

Another substantive change in the adopted amendments regards extraordinary circumstances which may cause a project to be ineligible for a categorical exclusion: the cost effectiveness of a project has been removed from this list of excluding factors. The executive administrator determined that this is a program eligibility requirement not an environmental constraint used to evaluate a project's eligibility for a categorical exclusion. To satisfy the programmatic requirement regarding a project's cost effectiveness, Texas Water Development Board engineers currently conduct: (1) a preliminary review of project costs based on information submitted in the financial assistance application, and (2) a thorough cost effectiveness analysis during review of a project's Engineering Feasibility Report.

The amendment is adopted with one minor correction to the published proposal by removing the word "or" between "functional" and "replacement in §371.42(b)(3).

###### REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking pursuant to Texas Government Code §2001.0225, which requires a regulatory analysis of major environmental rules. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The board is required to conduct a regulatory impacts analysis of a major environmental rule when the result of the adopted rulemaking is to exceed a standard set by federal law, unless the adopted rulemaking is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government implementing a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 3605 on the Texas Water Development Board to establish thresholds for retail public utility excess water loss and address the use of financial assistance to mitigate system water loss. The board has determined that the adopted rulemaking does not meet the definition of "major environmental rule" under that section; therefore, no regulatory impacts analysis of the adopted rulemaking is required. No comments were received by the board on the draft regulatory impacts analysis.

###### TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this adopted rule constitutes neither a statutory nor a

constitutional taking of private real property. The adopted rule does not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 3605 on the Texas Water Development Board to establish thresholds for retail public utility excess water loss and address the use of financial assistance to mitigate system water loss. The adopted rulemaking would substantially advance this purpose by amending 31 TAC §371.42 to incorporate new statutory requirements. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

#### PUBLIC COMMENTS

No comments were received on the proposed amendments.

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

The amendment is also adopted under the authority of Texas Water Code §15.605, which authorizes the board to adopt necessary rules to carry out Subchapter J of Texas Water Code Chapter 15, relating to Financial Assistance for Water Pollution Control.

The adoption affects Texas Water Code, Chapter 15.

#### §371.42. *Types of Environmental Determinations: Categorical Exclusions.*

(a) Categorical Exclusions may be available for projects that will not result in significant impacts on the quality of the human environment and that do not involve extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section.

(b) Projects that may be eligible for a categorical exclusion (CE) include the following actions on existing systems:

- (1) those that involve upgrades that are minor;
- (2) minor expansion of system capacity;
- (3) the rehabilitation, including functional replacement of the existing system and system components; and
- (4) the construction of new minor ancillary facilities located adjacent to or on the same property as existing facilities.

(c) Projects not eligible for a CE include:

- (1) projects that would otherwise be eligible for a CE but due to extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, are not eligible for a CE;
- (2) projects that involve new or relocated discharges to surface or ground water;
- (3) projects that will likely result in the substantial increase in the volume or the loading of a pollutant to the receiving water;
- (4) projects that will provide capacity to serve a population 30% greater than the existing population;
- (5) projects that are not supported by the state, or other regional growth plan or strategy; and
- (6) projects that directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

(d) Extraordinary circumstances may become known at any time during the planning, design or construction of a project and may cause the project to be ineligible for a CE. Extraordinary circumstances include, but are not limited to, the following known or expected impacts:

(1) potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time;

(2) disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities;

(3) a significant effect on federal or state-listed threatened or endangered species or their critical habitat;

(4) a significant effect on national or state natural landmarks or property with nationally significant or state historic, architectural, prehistoric, archeological or cultural value;

(5) a significant effect on environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers and significant fish or wildlife habitat;

(6) a significant adverse air quality effect;

(7) a significant effect on the pattern and type of land use or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans;

(8) significant public controversy about a potential environmental impact of the proposed project; and

(9) conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource protection or land-use laws or regulations.

(e) Upon the discovery of extraordinary circumstances, the executive administrator may deny a CE or rescind an existing CE.

(f) An Applicant shall submit sufficient information to demonstrate why the project is eligible for a CE including, but not limited to the following documentation:

(1) a brief but complete description of the project;

(2) plan maps or maps of the project depicting the location of all construction areas, the planning area boundaries, and any known environmentally important natural areas;

(3) information regarding the eligibility of the project for a CE under the criteria listed in subsection (b) of this section; and

(4) any information that may be helpful to determine whether any extraordinary circumstances, as listed in subsection (d)(1) - (9) of this section, apply to the project.

(g) The executive administrator shall review the information submitted and may request additional information as needed to complete the determination regarding the eligibility of a proposed project for a categorical exclusion.

(h) The executive administrator's determination relating to a CE shall be subject to public notice which shall be published either in a newspaper of general circulation in the county or counties of the affected community or on the agency's website and referenced in a public notice in a newspaper of general circulation in the county or counties of the affected community.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502308

Les Trobman

General Counsel

Texas Water Development Board

Effective date: July 7, 2015

Proposal publication date: April 10, 2015

For further information, please call: (512) 463-8061



## CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

### SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

The Texas Water Development Board (TWDB) adopts amendments to Chapter 375, Clean Water State Revolving Fund, Subchapter E, Division 1, §375.52, and Division 2, §375.62, relating to the issuance of categorical exclusions pursuant to the National Environmental Policy Act, 42 U.S.C. Chapter 55; and more specifically, pursuant to 40 C.F.R., Ch. 1, Subchapter A, Part 6, Procedures for Implementation. Section 375.52 pertains to environmental reviews and determinations for state projects. Section 375.62 pertains to environmental reviews and determinations for federal projects. The proposal is adopted without changes as published in the April 10, 2015, issue of the *Texas Register* (40 TexReg 2077).

#### DISCUSSION OF THE ADOPTED AMENDMENTS

The TWDB adopts the amendments to more precisely conform the board's rule to the federal procedures for implementation of the National Environmental Policy Act. The same amendment was proposed in 31 TAC §371.42, relating to Types of Environmental Determinations: Categorical Exclusions in the board's Drinking Water State Revolving Fund rules. In addition to the alignment of the board's rules to the federal procedures, the adopted amendment will make all of the board's state revolving fund rules related to categorical exclusions uniform.

#### SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Section 375.52, Types of Environmental Determinations: Categorical Exclusions.

This rule is applicable to projects receiving state funds or non-equivalent funds through the Clean Water State Revolving Fund. Section 375.52 will more closely track the language related to categorical exclusions and extraordinary circumstances contained in the federal procedures for implementation of the National Environmental Policy Act. The amendment clarifies the circumstances under which a categorical exclusion may be available. The amendment also clarifies the types of projects that are not eligible for categorical exclusions and identifies extraordinary circumstances which may cause a project to be ineligible. In general, the amendment provides more latitude for the executive administrator to grant categorical exclusions, while still maintaining compliance with the federal law. The amendment also modifies the information that Applicants must

provide to the executive administrator in order to demonstrate that the project is eligible for a categorical exclusion. The intent of this revision is to attain meaningful information from Applicants that may be used in the environmental review process.

Specifically, under the adopted amendments, the construction of new minor ancillary facilities that affect the degree of treatment or the capacity of the works may be eligible for a categorical exclusion provided that they do not involve a new or relocated discharge to surface or ground water, a substantial increase in the volume or loading of pollutant to the receiving water, and do not provide capacity to serve a population 30% greater than the existing population. In addition, the rule has been broadened to include as eligible for a categorical exclusion the construction of new minor ancillary facilities on property located directly adjacent to existing facilities. These modifications align the board's rule with the federal rule.

Another substantive change in the adopted amendments regards extraordinary circumstances which may cause a project to be ineligible for a categorical exclusion: the cost effectiveness of a project has been removed from this list of excluding factors. The executive administrator determined that this is a program eligibility requirement not an environmental constraint used to evaluate a project's eligibility for a categorical exclusion. To satisfy the programmatic requirement regarding a project's cost effectiveness, Texas Water Development Board engineers currently conduct: (1) a preliminary review of project costs based on information submitted in the financial assistance application, and (2) a thorough cost effectiveness analysis during review of a project's Engineering Feasibility Report.

Section 375.62, Types of Environmental Determinations: Categorical Exclusions.

This rule is applicable to projects receiving federal funds or equivalent funds through the Clean Water State Revolving Fund. Section 375.62 will more closely track the language related to categorical exclusions and extraordinary circumstances contained in the federal procedures for implementation of the National Environmental Policy Act. The amendment clarifies the circumstances under which a categorical exclusion may be available. The amendment also clarifies the types of projects that are not eligible for categorical exclusions and identifies extraordinary circumstances which may cause a project to be ineligible. In general, the amendment will provide more latitude for the executive administrator to grant categorical exclusions, while still maintaining compliance with the federal law. The amendment also modifies the information that Applicants must provide to the executive administrator in order to demonstrate that the project is eligible for a categorical exclusion. The intent of this revision is to attain meaningful information from Applicants that may be used in the environmental review process.

Specifically, under the adopted amendments, the construction of new minor ancillary facilities that affect the degree of treatment or the capacity of the works may be eligible for a categorical exclusion provided that they do not involve a new or relocated discharge to surface or ground water, a substantial increase in the volume or loading of pollutant to the receiving water, and do not provide capacity to serve a population 30% greater than the existing population. In addition, the rule has been broadened to include as eligible for a categorical exclusion, the construction of new minor ancillary facilities on property located directly adjacent to existing facilities. These modifications align the board's rule with the federal rule.

Another substantive change in the adopted amendments regards extraordinary circumstances which may cause a project to be ineligible for a categorical exclusion: the cost effectiveness of a project has been removed from this list of excluding factors. The executive administrator has determined that this is a program eligibility requirement not an environmental constraint used to evaluate a project's eligibility for a categorical exclusion. To satisfy the programmatic requirement regarding a project's cost effectiveness, Texas Water Development Board engineers currently conduct: (1) a preliminary review of project costs based on information submitted in the financial assistance application, and (2) a thorough cost effectiveness analysis during review of a project's Engineering Feasibility Report.

#### REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking pursuant to Texas Government Code §2001.0225, which requires a regulatory analysis of major environmental rules. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The board is required to conduct a regulatory impacts analysis of a major environmental rule when the result of the adopted rulemaking is to exceed a standard set by federal law, unless the adopted rulemaking is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government implementing a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 3605 on the Texas Water Development Board to establish thresholds for retail public utility excess water loss and address the use of financial assistance to mitigate system water loss. The board has determined that the adopted rulemaking does not meet the definition of "major environmental rule" under that section; therefore, no regulatory impacts analysis of the adopted rulemaking is required. No comments were received by the board on the draft regulatory impacts analysis.

#### TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this adopted rule constitutes neither a statutory nor a constitutional taking of private real property. The adopted rule does not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 3605 on the Texas Water Development Board to establish thresholds for retail public utility excess water loss and address the use of financial assistance to mitigate system water loss. The adopted rulemaking would substantially advance this purpose by amending 31 TAC §375.52 and §375.62 to incorporate new statutory requirements. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

#### PUBLIC COMMENTS

No comments were received on the proposed amendments.

## DIVISION 1. STATE PROJECTS

### 31 TAC §375.52

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

The amendments are also adopted under the authority of Texas Water Code §15.605, which authorizes the board to adopt necessary rules to carry out Subchapter J of Texas Water Code Chapter 15, relating to Financial Assistance for Water Pollution Control.

The adopted rulemaking affects Texas Water Code, Chapter 15.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502309

Les Trobman

General Counsel

Texas Water Development Board

Effective date: July 7, 2015

Proposal publication date: April 10, 2015

For further information, please call: (512) 463-8061



## DIVISION 2. FEDERAL PROJECTS

### 31 TAC §375.62

#### STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board.

The amendments are also adopted under the authority of Texas Water Code §15.605, which authorizes the board to adopt necessary rules to carry out Subchapter J of Texas Water Code Chapter 15, relating to Financial Assistance for Water Pollution Control.

The adopted rulemaking affects Texas Water Code, Chapter 15.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502310

Les Trobman

General Counsel

Texas Water Development Board

Effective date: July 7, 2015

Proposal publication date: April 10, 2015

For further information, please call: (512) 463-8061



# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

### CHAPTER 17. PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Chapter 17, consisting of §§17.101 - 17.104, 17.201 - 17.203, 17.301 - 17.303, and 17.401, concerning Preadmission Screening and Resident Review (PASRR), and new §§17.101 - 17.103, 17.201 - 17.204, 17.301, 17.302, 17.401, and 17.501 - 17.503, in Chapter 17, Preadmission Screening and Resident Review (PASRR). New §§17.102, 17.301, 17.302, 17.401, and 17.502 are adopted with changes to the proposed text published in the April 3, 2015, issue of the *Texas Register* (40 TexReg 1947). New §§17.101, 17.103, 17.201 - 17.204, 17.501, and 17.503 and the repeal of §§17.101 - 17.104, 17.201 - 17.203, 17.301 - 17.303, and 17.401 are adopted without changes to the proposed text.

This adoption repeals the current Chapter 17 that describes the preadmission screening and resident review (PASRR) process and applies to a Medicaid-certified nursing facility (NF), a local intellectual and developmental disability authority (LIDDA), and a local mental health authority (LMHA). New Chapter 17 describes the responsibilities of a LIDDA and an LMHA related to PASRR. A new Subchapter BB in Chapter 19, describing the requirements of an NF related to PASRR, is published as adopted in this issue of the *Texas Register*. PASRR is a federal requirement in the Code of Federal Regulations, Title 42, Part 483, Subpart C. PASRR is a process to identify an individual with a mental illness (MI), an intellectual disability (ID), or a developmental disability (DD) who is seeking admission to an NF or who resides in an NF to ensure the appropriateness of admission to an NF and to determine what specialized services an individual needs.

New Chapter 17 requires an individual seeking admission to an NF or a resident of an NF receive a PASRR Level 1 Screening. If an individual or resident is suspected of having MI, ID, or DD, the LIDDA or LMHA must conduct a PASRR evaluation to determine if the individual or resident has MI, ID, or DD, and if so, determine if the individual or resident needs NF care and specialized services. In addition, the new Chapter 17 describes the role and responsibilities of a LIDDA for providing service planning and transition planning for a Medicaid-eligible NF resident 21 years of age or older who has ID or DD.

Concerning §17.102, the agency made several changes. The agency deleted the term "affirmative industry" because its only usage, which was in the definition of "day habilitation," has been eliminated. The agency reorganized the definition of "day habilitation" and added "transportation during day habilitation activities necessary for the person's participation in a scheduled day habilitation activity" for consistency with the service definition in other DADS programs. In the definition of "DD" (developmental disability), the agency changed the word "conditions" to "criteria" in describing the factors listed in the federal definition of "persons with related conditions" because using "conditions" twice made the definition difficult to understand. The agency revised the definition of "ISP" (individual service plan) to reference §17.502(2) rather than repeat the text of that paragraph. The agency used

the term "MDS assessment" (minimum data set assessment) in the definition of "LTC Online Portal" because it is a defined term. The agency changed the definition of "supported employment" to clarify that the assistance required by an individual must be because of a disability and must be intensive, ongoing support.

Concerning §17.301(c), the agency changed the rule to acknowledge that a referring entity who is a family member, legally authorized representative (LAR), other personal representative selected by the individual, or a representative from an emergency placement source, may request assistance from an NF in completing a PASRR Level 1 screening (PL1). This is consistent with a change made in new Chapter 19, Subchapter BB, published as adopted in this issue of the *Texas Register*. In §17.302(c)(3), the agency deleted the phrase "for a resident who is a Medicaid recipient" because the prescribed activity in (c)(3) is not limited to a resident who is a Medicaid recipient. In §17.401(a)(3), the agency changed the term "individual's" to "resident's" because an interdisciplinary team (IDT) is for a resident, not an individual.

DADS received written comments from Disability Rights Texas and the Texas Department of State Health Services. A summary of the comments and the responses follows.

Comment: Concerning §17.102(9), relating to the definition of "day habilitation," a commenter requested the definition be revised to allow day habilitation to be provided in an individual setting as well as a group setting. The commenter also expressed concern about "bundling employment services" and requested that the last sentence of the definition regarding day training be deleted.

Response: The agency agrees that employment-related activities should not be part of day habilitation and revised the definition to delete the last sentence. However, the agency does not agree that day habilitation can be provided in an individual setting and, therefore, did not revise that part of the definition. The agency notes that independent living skills training is an appropriate specialized service if a designated resident desires habilitative services in an individual setting.

Comment: Concerning §17.102(41), relating to the definition of "specialized services," a commenter requested that "day habilitation" be removed from the category of "vocational and pre-vocational activities" listed under LIDDA specialized services, and be listed as a separate LIDDA specialized service.

Response: The agency agrees with the commenter and revised the definition to eliminate the category of "vocational and pre-vocational activities," making employment assistance, supported employment, and day habilitation all separate specialized services. The agency also revised the definition to make it consistent with new Chapter 19, Subchapter BB, which is published as adopted in this issue of the *Texas Register* by dividing specialized services into "nursing facility specialized services," "LIDDA specialized services," and "LMHA specialized services."

Comment: Concerning §17.102(42), relating to the definition of "SPT" (service planning team), a commenter requested it be revised to include a representative from the LMHA on the team if a designated resident has mental illness (MI) to ensure the designated resident receives needed person-centered mental health services.

Response: The agency agrees with the commenter and revised the definition to state that an SPT always includes a representative from the LMHA if the designated resident has MI. The agency made a similar change to the definition of "IDT" (inter-

disciplinary team), which is a team for a resident with MI, ID, or DD.

Comment: Concerning §17.302(c)(2)(C), relating to the IDT meeting, a commenter requested the rule be revised to state that the determination of whether a resident is best served in a facility or community setting is made through a person-centered service planning process that informs the resident about the benefits of community living and community living options. The commenter notes the change would be consistent with the service planning team requirements in §17.502.

Response: The agency did not revise the rule in response to this comment. While the agency fully supports person-centered planning, the determination of whether a resident is best served in a facility or community setting is not part of the service planning process described in Subchapter E of this chapter (§§17.501 - 17.503). This determination is part of the PASRR Level II Evaluation (PE) process required by Title 42 Code of Federal Regulations §483.12 and described in §17.302. The agency notes that the PE process also includes gathering information about whether the individual wants to move back into the community and, if so, identifying which program or setting the individual desires.

Subchapter E of the rules addresses assigning a service coordinator, convening a service planning team meeting, and developing an individual service plan using a person-directed planning process for a designated resident. Section 17.501(b)(2)(A) requires the assigned service coordinator to "provide information about and discuss with the designated resident and LAR, if any, the range of community living service and support options and alternatives, using DADS-approved materials, form, and instructions." Additionally, §17.501(b)(3) requires the service coordinator to facilitate the service planning team's transition planning responsibilities by developing a transition plan for a designated resident who wants to move to the community.

Comment: Concerning §17.302, relating to LIDDA and LMHA responsibilities in the PASRR process, a commenter requested a revision to add a subsection (d) requiring the LIDDA to include the LMHA on the service planning team when the designated resident has an MI. The commenter also requested that the new subsection (d) include references to the types of LMHA specialized services.

Response: The agency did not revise §17.302 in response to the comment, but the agency notes that the definition of "SPT" has been revised to require an LMHA representative be on the team if a designated resident has MI.

Comment: Concerning §17.502(4) relating to SPT responsibilities for a designated resident, a commenter requested the term "integrated day activities" be revised to "integrated activities according to the resident's preferences." The commenter also requested a revision to add that, in addition to activities with residents, activities are in the community with individuals who do or do not have disabilities.

Response: The agency agrees with the comment and revised §17.502(4) to address the commenter's concerns.

Comment: Concerning §17.502 relating to SPT responsibilities for a designated resident, a commenter requested a revision to clarify that the term "designated resident" includes an individual with ID and MI, or DD and MI to ensure the LMHA is part of the SPT when an individual has MI.

Response: The agency did not revise §17.502 as requested. However, the agency responds that an individual with ID and MI, or DD and MI, is a designated resident because the individual has ID or DD. Therefore, the rule applies to an individual who has MI and ID, or MI and DD. Also, the agency revised the definition of SPT to include an LMHA representative if a designated resident has MI.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §§17.101 - 17.104

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502314

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: July 7, 2015

Proposal publication date: April 3, 2015

For further information, please call: (512) 438-3532



## SUBCHAPTER B. SCREENING, EXPEDITED ADMISSION, AND RESIDENT REVIEW

### 40 TAC §§17.201 - 17.203

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.



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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502315

Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

Effective date: July 7, 2015

Proposal publication date: April 3, 2015

For further information, please call: (512) 438-3532



## SUBCHAPTER C. RESPONSIBILITIES

### 40 TAC §§17.301 - 17.303

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502316

Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

Effective date: July 7, 2015

Proposal publication date: April 3, 2015

For further information, please call: (512) 438-3532



## SUBCHAPTER D. VENDOR PAYMENT

### 40 TAC §17.401

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules

governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502317

Lawrence Hornsby  
General Counsel

Department of Aging and Disability Services

Effective date: July 7, 2015

Proposal publication date: April 3, 2015

For further information, please call: (512) 438-3532



## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §§17.101 - 17.103

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

#### *§17.102. Definitions.*

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

(1) Alternate placement assistance--Assistance provided to a resident to locate and secure services chosen by the resident or LAR that meet the resident's basic needs in a setting other than a nursing facility. Assistance includes the identification of specific services and supports available through alternate resources for which the resident may be eligible and an explanation of the possible benefits and consequences of selecting a setting other than a nursing facility.

(2) Behavioral support--Specialized interventions by a qualified service provider to assist a person to increase adaptive behaviors and to replace or modify maladaptive behaviors that prevent or interfere with the person's inclusion in home and family life or community life.

(A) Behavioral support includes:

(i) assessing and analyzing assessment findings so that an appropriate behavior support plan may be designed;

(ii) developing an individualized behavior support plan consistent with the outcomes identified in the individual service plan;

(iii) training and consulting with family members or other providers and, as appropriate, the person; and

(iv) monitoring and evaluating the success of the behavior support plan and modifying the plan as necessary.

(B) A qualified service provider of behavioral support:

(i) is licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(ii) is licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(iii) has been issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(iv) is certified by DADS as described in §5.161 of this title;

(v) is licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505;

(vi) is licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503; or

(vii) is certified as a behavior analyst by the Behavior Analyst Certification Board.

(3) Collateral contact--A person who is knowledgeable about an individual's situation and who may support or corroborate information provided by the individual.

(4) Coma--A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(5) Comprehensive care plan--A plan, defined in §19.2703 of this title (relating to Definitions).

(6) Convalescent care--A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery.

(7) DADS--The Texas Department of Aging and Disability Services. For purposes of the PASRR process, DADS is the state authority for intellectual and developmental disabilities.

(8) Day habilitation--Assistance to a person to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and community life. Day habilitation provides:

(A) individualized activities consistent with achieving the outcomes identified in the person's service plan;

(B) activities necessary to reinforce therapeutic outcomes targeted by other support providers and other specialized services;

(C) services in a group setting, other than the person's residence for typically up to five days a week, six hours per day on a regularly scheduled basis;

(D) personal assistance for a person who cannot manage personal care needs during the day habilitation activities; and

(E) transportation during the day habilitation activity necessary for a person's participation in the day habilitation activities.

(9) DD--Developmental disability. A disability that meets the criteria conditions described in the definition of "persons with related conditions" in Code of Federal Regulations (CFR) Title 42 §435.1010.

(10) Delirium--A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(11) Designated resident--A Medicaid recipient with ID or DD who is 21 years of age or older, and who is a resident or has transitioned to the community from a nursing facility.

(12) DSHS--Department of State Health Services. For purposes of the PASRR process, DSHS is the state mental health authority.

(13) Emergency protective services--Services that are furnished by the Department of Family and Protective Services (DFPS) to an elderly or disabled individual who has been determined to be in a state of abuse, neglect, or exploitation.

(14) Employment assistance--Assistance provided to a person to help the person locate competitive employment in the community, consisting of a service provider performing the following activities:

(A) identifying a person's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with a person's identified preferences, skills, and requirements;

(C) contacting a prospective employer on behalf of a person and negotiating the person's employment;

(D) transporting the person to help the person locate competitive employment in the community; and

(E) participating in service planning team meetings.

(15) Exempted hospital discharge--A category of nursing facility admission that occurs when a physician has certified that an individual who is being discharged from a hospital is likely to require less than 30 days of nursing facility services for the condition for which the individual was hospitalized.

(16) Expedited admission--A category of nursing facility admission that occurs when an individual meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(17) ID--Intellectual disability. Mental retardation, as defined in the Code of Federal Regulations (CFR) Title 42 §483.102(b)(3)(i).

(18) IDT--Interdisciplinary team. A team consisting of:

(A) a resident with MI, ID, or DD;

(B) the resident's LAR, if any;

(C) a registered nurse from the nursing facility with responsibility for the resident;

(D) a representative of:

(i) the LIDDA, if the resident has ID or DD;

(ii) the or LMHA, if the resident has MI; or

(iii) the LIDDA and the LMHA, if the resident has MI and DD, or MI and ID; and

(E) others as follows:

(i) a concerned person whose inclusion is requested by the resident or LAR;

(ii) a person specified by the resident or LAR, nursing facility, or LIDDA or LMHA, as applicable, who is professionally qualified or certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of people with MI, ID, or DD; and

(iii) a representative of the appropriate school district if the resident is school age and inclusion of the district representative is requested by the resident or LAR.

(19) Independent living skills training--Individualized activities that are consistent with the individual service plan and provided in a person's residence and at community locations (e.g., libraries and stores). Supports include:

(A) habilitation and support activities that foster improvement of, or facilitate, the person's ability to perform functional living skills and other daily living activities;

(B) activities for the person's family that help preserve the family unit and prevent or limit out-of-home placement of the person; and

(C) transportation to facilitate the person's employment opportunities and participation in community activities, and between the person's residence and day habilitation site.

(20) Individual--A person seeking admission to a nursing facility.

(21) ISP--Individual service plan. A service plan developed by the service planning team for a designated resident in accordance with §17.502(2) of this chapter (relating to Service Planning Team (SPT) Responsibilities for a Designated Resident).

(22) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual or resident with regard to a matter described by this chapter, and who may be the parent of a minor child, the legal guardian, or the surrogate decision maker.

(23) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of the Texas Health and Human Services Commission, in accordance with Texas Health and Safety Code §533.035.

(24) LMHA--Local mental health authority. An entity designated by the executive commissioner of the Texas Health and Human Services Commission, in accordance with Texas Health and Safety Code §533.035. For the purposes of this chapter, LMHA includes an entity designated by the Department of State Health Services to perform PASRR functions.

(25) LTC Online Portal--Long Term Care Online Portal. A web-based application used by Medicaid providers to submit forms, screenings, evaluations, and the long term services and supports Medicaid identification section of the MDS assessment.

(26) MDS assessment--Minimum data set assessment. A standardized collection of demographic and clinical information that describes a resident's overall condition, which a licensed nursing facility in Texas is required to submit for a resident admitted into the facility.

(27) MI--Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(28) Nursing facility--A Medicaid-certified facility that is licensed in accordance with the Texas Health and Safety Code, Chapter 242.

(29) Nursing facility PASRR support activities--Actions a nursing facility takes in coordination with a LIDDA or a LMHA to facilitate the successful provision of LIDDA or LMHA specialized services, including:

(A) arranging transportation for a nursing facility resident to participate in a LIDDA or LMHA specialized service outside the facility;

(B) sending a resident to a scheduled LIDDA or LMHA specialized service with food and medications required by the resident; and

(C) including in the comprehensive care plan an agreement to avoid, when possible, scheduling nursing facility services at times that conflict with LIDDA or LMHA specialized services.

(30) PASRR--Preadmission screening and resident review.

(31) PE (PASRR Level II evaluation)--A face-to-face evaluation of an individual suspected of having MI, ID, or DD performed by a LIDDA or a LMHA to determine if the individual has MI, ID, or DD and, if so, to:

(A) assess the individual's need for care in a nursing facility;

(B) assess the individual's need for specialized services; and

(C) identify alternate placement options.

(32) PL1 (PASRR Level I screening)--The process of screening an individual to identify whether the individual is suspected of having MI, ID, or DD.

(33) Pre-admission--A category of nursing facility admission from a community setting that is not an expedited admission or an exempted hospital discharge.

(34) Referring entity--The entity that refers an individual to a nursing facility, such as a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source (e.g., law enforcement).

(35) Resident--An individual who resides in a Medicaid-certified nursing facility and receives services provided by professional nursing personnel of the facility.

(36) Resident review--A face-to-face evaluation of a resident performed by a LIDDA or LMHA:

(A) for a resident with MI, ID, or DD who experienced a significant change in status, to:

(i) assess the resident's need for continued care in a nursing facility;

(ii) assess the resident's need for specialized services; and

(iii) identify alternate placement options; and

(B) for a resident suspected of having MI, ID, or DD, to determine whether the resident has MI, ID, or DD and, if so:

(i) assess the resident's need for continued care in a nursing facility;

(ii) assess the resident's need for specialized services; and

(iii) identify alternate placement options.

(37) Respite--Services provided on a short-term basis to a person because of the absence of or the need for relief by the person's unpaid caregiver for a period not to exceed 14 days.

(38) Service coordination--As defined in §2.553 of this title (relating to Definitions), assistance in accessing medical, social, educational, and other appropriate services and supports that will help a person achieve a quality of life and community participation acceptable to the person and LAR on the person's behalf.

(39) Service coordinator--An employee of a LIDDA who provides service coordination.

(40) Severe physical illness--An illness resulting in ventilator dependence or a diagnosis, such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from specialized services.

(41) Specialized services--Support services, other than nursing facility services, that are identified through the PE or resident review and may be provided to a resident who has MI, ID, or DD.

(A) Nursing facility specialized services for a resident with ID or DD are:

(i) physical therapy, occupational therapy, and speech therapy;

(ii) a customized manual wheelchair; and

(iii) durable medical equipment, which consists of:

(I) a gait trainer;

(II) a standing board;

(III) a special needs car seat or travel restraint;

(IV) a specialized or treated pressure-reducing support surface mattress;

(V) a positioning wedge;

(VI) a prosthetic device; and

(VII) an orthotic device.

(B) LIDDA specialized services for a resident with ID or DD are:

(i) service coordination, which includes alternate placement assistance;

(ii) employment assistance;

(iii) supported employment;

(iv) day habilitation;

(v) independent living skills training; and

(vi) behavioral support.

(C) LMHA specialized services for a resident with MI, including alternate placement assistance, are defined in 25 TAC Chapter 412, Subchapter I (relating to MH Case Management) and 25 TAC Chapter 416, Subchapter A (relating to Mental Health Rehabilitative Services).

(42) SPT--Service planning team. A team that develops, reviews, and revises the ISP for a designated resident.

(A) The team always includes:

(i) the designated resident;

(ii) the designated resident's LAR, if any;

(iii) the service coordinator;

(iv) while the designated resident is in a nursing facility:

(I) nursing facility staff familiar with the designated resident's needs; and

(II) persons providing specialized services for the designated resident;

(v) a representative from the community provider, if one has been selected; and

(vi) a representative from the LMHA, if the designated resident has MI.

(B) Other participants on the SPT may include:

(i) a concerned person whose inclusion is requested by the designated resident or the LAR; and

(ii) at the discretion of the LIDDA, a person who is directly involved in the delivery of services to people with ID or DD.

(43) Supported employment--Assistance to a person who, because of a disability, requires intensive, ongoing support to be self-employed, work from the person's residence, or perform in a work setting at which persons without disabilities are employed, in order for the person to sustain competitive employment. Assistance consists of the following activities:

(A) making employment adaptations, supervising, and providing training related to the person's assessed needs;

(B) transporting the person to support the person to be self-employed, work from the person's residence, or perform in a work setting; and

(C) participating in service planning team meetings.

(44) Surrogate decision maker--An actively involved family member of a resident who has been identified by an IDT in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent on behalf of the resident.

(45) Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course and that is documented by a physician's certification in the individual's medical record maintained by a nursing facility.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502318

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: July 7, 2015

Proposal publication date: April 3, 2015

For further information, please call: (512) 438-3532

◆        ◆        ◆

## SUBCHAPTER B. PASRR SCREENING AND EVALUATION PROCESS

### 40 TAC §§17.201 - 17.204

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502320

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: July 7, 2015

Proposal publication date: April 3, 2015

For further information, please call: (512) 438-3532

◆        ◆        ◆

## SUBCHAPTER C. RESPONSIBILITIES

### 40 TAC §17.301, §17.302

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

*§17.301. Referring Entity Responsibilities Related to the PASRR Process.*

(a) Except as provided in subsection (b) of this section, a referring entity must:

(1) complete the PL1 for an individual seeking admission into a nursing facility;

(2) contact a nursing facility selected by the individual or LAR to notify the nursing facility of the individual's interest in admission;

(3) provide the completed PL1 as follows:

(A) to the nursing facility selected by the individual or LAR:

(i) for an individual who is being admitted through an expedited admission or an exempted hospital discharge; or

(ii) for an individual who is being admitted through a pre-admission process and is not suspected of having MI, ID, or DD;

(B) to the LIDDA or LMHA, as applicable, for an individual who is suspected of having MI, ID, or DD, and is being admitted through a pre-admission process.

(b) A referring entity is not required to comply with subsection (a) if the individual has not had an interruption in nursing facility residence, other than for acute care lasting fewer than 30 days, and the individual is returning to the same nursing facility.

(c) If a referring entity is a family member, LAR, other personal representative selected by the individual, or a representative from an emergency placement source, the referring entity may request assistance from the nursing facility in completing the PL1.

*§17.302. LIDDA and LMHA Responsibilities Related to the PASRR Process.*

(a) A LIDDA or LMHA, as applicable, must:

(1) enter in the LTC Online Portal the data from a PL1 completed by a referring entity for an individual who is suspected of having MI, ID, or DD and who is seeking admission to a nursing facility under the preadmission process; and

(2) complete a PE or resident review as follows:

(A) within 72 hours after receiving a copy of the PL1 from the referring entity or notification from the LTC Online Portal:

(i) call the referring entity or nursing facility to schedule the PE or resident review; and

(ii) meet face-to-face with the individual or resident at the referring entity or nursing facility to gather information to complete the PE or resident review; and

(B) within seven days after receiving a copy of the PL1 from the referring entity or notification from the LTC Online Portal:

(i) gather information needed to complete the PE or resident review, including:

(I) reviewing the individual's or resident's medical records;

(II) meeting face-to-face with the individual's or resident's LAR or communicating with the LAR by telephone if the LAR is not able to meet face-to-face;

(III) communicating by telephone, mail, or face-to-face with collateral contacts as necessary; and

(IV) obtaining additional information as needed; and

(ii) enter the data from the PE or resident review in the LTC Online Portal.

(b) After completing a PE or resident review, if a nursing facility certifies in the LTC Online Portal that it cannot meet the needs of an individual or resident with MI, ID, or DD, then the LIDDA or

LMHA, as applicable, must assist the individual, resident, or LAR in choosing another nursing facility that will certify it can meet the needs of the individual or resident.

(c) After completing a PE or resident review, if a nursing facility certifies in the LTC Online Portal that it can meet the needs of a resident with MI, ID, or DD, or certifies in the LTC Online Portal that it can meet the needs of an individual with MI, ID, or DD seeking admission and admits the individual, the LIDDA or LMHA, as applicable, must:

- (1) coordinate with the nursing facility to schedule an IDT meeting to discuss specialized services;
- (2) participate in the resident's IDT meeting as scheduled by the nursing facility to, in collaboration with the other members of the IDT:
  - (A) identify which of the specialized services recommended for the resident that the resident, or LAR on the resident's behalf, wants to receive;
  - (B) identify the nursing facility PASRR support activities for the resident; and
  - (C) determine whether the resident is best served in a facility or community setting;
- (3) within five business days after the IDT meeting, confirm in the LTC Online Portal, in accordance with DADS instructions, the specialized services agreed upon in the IDT meeting; and
- (4) if Medicaid or other funding is available:
  - (A) initiate specialized services within 30 days after the date that the specialized services are agreed upon in the IDT meeting; and
  - (B) provide the specialized services agreed upon in the IDT meeting to the resident.

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

Filed with the Office of the Secretary of State on June 17, 2015.  
TRD-201502321  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Effective date: July 7, 2015  
Proposal publication date: April 3, 2015  
For further information, please call: (512) 438-3532

◆ ◆ ◆

## SUBCHAPTER D. VENDOR PAYMENT

### 40 TAC §17.401

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds

and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

### §17.401. Reimbursement for a PE or Resident Review.

(a) A LIDDA and LMHA must accept the reimbursement rate, established by the Texas Health and Human Services Commission, as payment in full for the following activities:

- (1) completing a PE or resident review in accordance with §17.302(a)(2) of this chapter (relating to LIDDA and LMHA Responsibilities Related to the PASRR Process);
- (2) assisting an individual or resident with MI, ID, or DD or the individual's or resident's LAR in choosing a nursing facility that will certify it can meet the needs of the individual or resident as described in §17.302(b) of this chapter;
- (3) participating in the resident's IDT meeting; and
- (4) submitting to DADS, in accordance with DADS instructions, information related to participation in the IDT meeting and specialized services agreed upon during the IDT meeting.

(b) The reimbursement rate for the activities described in subsection (a) of this section includes travel costs associated with the activities. DADS does not pay any additional amounts for travel. A LIDDA or LMHA must not request reimbursement for travel time or travel costs associated with the activities described in subsection (a) of this section.

Filed with the Office of the Secretary of State on June 17, 2015.  
TRD-201502322  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Effective date: July 7, 2015  
Proposal publication date: April 3, 2015  
For further information, please call: (512) 438-3532

◆ ◆ ◆

## SUBCHAPTER E. SERVICE PLANNING FOR A DESIGNATED RESIDENT

### 40 TAC §§17.501 - 17.503

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

### §17.502. Service Planning Team (SPT) Responsibilities for a Designated Resident.

The SPT of a designated resident must:

(1) ensure that the designated resident, regardless of whether he or she has an LAR, participates in the SPT to the fullest extent possible and receives the support necessary to do so, including, but not limited to, communication supports;

(2) develop an ISP for the designated resident that:

(A) is individualized and developed through a person-centered approach;

(B) identifies the designated resident's:

(i) strengths;

(ii) preferences;

(iii) psychiatric, behavioral, nutritional management, and support needs;

(iv) desired outcomes; and

(v) for a designated resident who has transitioned to the community, medical and nursing needs; and

(C) identifies the specialized services to be provided to the designated resident, including frequency, intensity, and duration for each service;

(3) monitor and coordinate services, including specialized services, identified on the ISP and provided to the designated resident to ensure the designated resident's needs are being met;

(4) considering the designated resident's preferences, ensure the designated resident is provided opportunities for engaging in integrated activities:

(A) with residents who do not have ID or DD; and

(B) in community settings with people who do not have a disability;

(5) make timely referrals, service changes, and amendments to the ISP as needed;

(6) be responsible for transition planning in accordance with §17.503 of this title (relating to Transition Planning for a Designated Resident); and

(7) ensure that the designated resident's ISP, including specialized services, is coordinated with the nursing facility's comprehensive care plan.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502323

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: July 7, 2015

Proposal publication date: April 3, 2015

For further information, please call: (512) 438-3532



## CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

## SUBCHAPTER BB. NURSING FACILITY RESPONSIBILITIES RELATED TO PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

### 40 TAC §§19.2701 - 19.2709

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new Subchapter BB, Nursing Facility Responsibilities Related to Preadmission Screening and Resident Review (PASRR), consisting of §19.2701, concerning the purpose of the subchapter; §19.2702, concerning limitation on charges for nursing facility services; §19.2703, concerning definitions; §19.2704, concerning nursing facility responsibilities related to PASRR; §19.2705, concerning nursing facility responsibilities related to the fair hearing process; §19.2706, concerning nursing facility responsibilities related to designated residents; §19.2707, concerning transition activities related to designated residents; §19.2708, concerning educational and informational activities for residents; and §19.2709, concerning incident and complaint reporting, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. New §§19.2703, 19.2704, 19.2706, 19.2708, and 19.2709 are adopted with changes to the proposed text published in the April 3, 2015, issue of the *Texas Register* (40 TexReg 1957). New §§19.2701, 19.2702, 19.2705, and 19.2707 are adopted without changes to the proposed text.

The new Subchapter BB in Chapter 19 requires a Medicaid-certified nursing facility to comply with provisions related to the preadmission screening and resident review (PASRR) process and nursing facility specialized services for an individual seeking admission to a nursing facility or an individual residing in a nursing facility. PASRR is a federal requirement described in Code of Federal Regulations, Title 42, Part 483, Subpart C. A nursing facility must not admit an individual before a Level I screening for suspected mental illness (MI), intellectual disability (ID), or developmental disability (DD) is conducted. If an individual is suspected of having MI, ID, or DD, the local intellectual and developmental disability authority (LIDDA) conducts a PASRR Level II evaluation (PE) to determine if the individual has MI, ID, or DD and, if so, to determine if the individual needs nursing facility care and specialized services. The rules governing the LIDDA are in new Chapter 17 published as adopted in this issue of the *Texas Register*. Generally, the PE must be completed before admission, but the adopted subchapter explains when a nursing facility can admit an individual before the PE is complete. The new subchapter includes requirements for information a nursing facility must enter in the long term care (LTC) Online Portal, for cooperation with the LIDDA and the local mental health authority, and for an interdisciplinary team meeting to identify specialized services needed by an individual. The new subchapter requires a nursing facility to include nursing facility specialized services in the comprehensive care plan and to provide those specialized services. The new subchapter also describes the responsibility of a nursing facility for participating in service planning and transition planning for certain residents.

The new subchapter requires a nursing facility, nursing facility contractor, or nursing facility specialized services provider to report to the LIDDA the identity of certain residents who express an interest in moving to the community. The subchapter allows the LIDDA service coordinator access to a resident's records during visits and allows LIDDA staff, presenters, community providers,

and advocates to speak with certain nursing facility residents about community options. The subchapter also requires a nursing facility to report incidents and complaints, including abuse and neglect, to a resident's service coordinator or local mental health authority (LMHA) representative, as appropriate.

The agency revised the definition of "DD--Developmental disability" in §19.2703(6) by changing the word "conditions" to "criteria" in describing the factors listed in the federal definition of "persons with related conditions" because using "conditions" twice made the definition difficult to understand.

The agency revised the definition of "ISP--Individual Service Plan" in §19.2703(16) to reference §17.502(2) rather than repeat the text of that paragraph. This is consistent with the definition in new Chapter 17, which is published as adopted in this issue of the *Texas Register*.

The agency revised the definition of "LIDDA specialized services" in §19.2703(19) to eliminate the category of "vocational and pre-vocational activities," making employment assistance, supported employment, and day habilitation all separate specialized services. The definition was also edited to be consistent with the definition of the term in new Chapter 17, which is published as adopted in this issue of the *Texas Register*.

The agency revised the definitions of "LMHA specialized services" (local mental health authority specialized services) and "nursing facility specialized services" in §19.2703(21) and (27) to be consistent with the definitions of the terms in new Chapter 17, which is published as adopted in this issue of the *Texas Register*.

The agency revised §19.2704(a) to add a provision stating that a nursing facility may provide assistance to a referring entity in completing the PL1, if requested to do so and the referring entity is a family member, legally authorized representative, other personal representative selected by the individual, or a representative from an emergency placement source. The agency revised §19.2704(i)(5) to clarify that a nursing facility must enter information about an interdisciplinary team meeting in the LTC Online Portal for all residents, not just for residents who are Medicaid recipients.

The agency revised §19.2704(i)(8) to clarify that annual documentation of nursing facility specialized services, LIDDA specialized services, and LMHA specialized services is required in the LTC Online Portal only for a resident who is a Medicaid recipient.

The agency revised §19.2706(c)(2) to delete the description of an ISP because it duplicates the information in §17.502(2), which is referenced in the definition of ISP.

DADS received written comments from Disability Rights Texas and the Texas Department of State Health Services. A summary of the comments and responses follows.

Comment: A commenter requested that the definition of "nursing facility specialized services" in §19.2703(27) be revised to indicate that the list of specialized services is not limited, which allows other specialized services to be added if needed by the resident.

Response: The agency responds that the list of specialized services in the definition of nursing facility specialized services is consistent with the list of nursing facility specialized services that have approved funding. The rule was not changed in response to this comment.

Comment: A commenter requested that the definition of "service planning team" in §19.2703(40) be revised to include a representative from the LMHA on the team if a designated resident has MI to ensure the designated resident receives needed person-centered mental health services.

Response: The agency agrees with this comment and revised the definition of the service planning team to include a representative from the LMHA if the designated resident has MI.

Comment: A commenter requested that §19.2704, relating to nursing facility responsibilities related to PASRR, be revised to specify that the determination of whether the resident is best served in a facility or community setting is made through a person-centered service planning team process that informs the resident about the benefits of community living and community living options. The commenter notes the change would be consistent with service planning team requirements in §19.2706.

Response: The agency did not revise the rule in response to this comment. While the agency fully supports person-centered planning, the determination of whether the resident is best served in a nursing facility or community setting is part of the PASRR Level II Evaluation (PE) process required by Title 42 Code of Federal Regulations §483.132. The agency notes that the PE process also includes gathering information about whether the resident wants to move back into the community and, if so, identifying which program or setting the resident desires. Section 19.2706 requires a nursing facility to designate staff and contractors to participate on the service planning team convened to develop an individual service plan through a person-centered process, and to assist the service planning team by developing a transition plan for a resident who has expressed interest in community living and by removing barriers to a transition if no transition plan is recommended due to those barriers.

Comment: A commenter requested that §19.2708(2), relating to educational and informational activities for residents, be revised to specify that a nursing facility must allow resident access to peer-to-peer and family-to-family activities for educational activities in community living options.

Response: The agency responds that the LIDDA is responsible for arranging educational and informational activities for a designated resident. The agency revised the rule to clarify that a nursing facility must allow access to a designated resident to support educational activities about community living options arranged by the LIDDA. The agency also revised the rule to clarify that a nursing facility must allow representatives of the Office of the State Long Term Care Ombudsman and Disability Rights Texas access to all residents to educate and inform them about rights and options related to PASRR.

Comment: A commenter requested that §19.2709, relating to incident and complaint reporting, be revised to require a nursing facility to report incidents and complaints to an LMHA representative if the designated resident involved has MI.

Response: The agency agrees with this comment and has revised the rule to add a requirement that a nursing facility report by telephone an incident or complaint involving a resident with MI receiving LMHA specialized services to the LMHA representative immediately upon learning of the incident or complaint.

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of



services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§19.2703. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

(1) **Alternate placement assistance**--Assistance provided to a resident to locate and secure services chosen by the resident or LAR that meet the resident's basic needs in a setting other than a nursing facility. Assistance includes the identification of specific services and supports available through alternate resources for which the resident may be eligible and an explanation of the possible benefits and consequences of selecting a setting other than a nursing facility.

(2) **Coma**--A state of unconsciousness characterized by the inability to respond to sensory stimuli as documented by a physician.

(3) **Comprehensive care plan**--A plan, defined in §19.101 of this chapter (relating to Definitions), that includes, for a designated resident, nursing facility specialized services and nursing facility PASRR support activities.

(4) **Convalescent care**--A type of care provided after an individual's release from an acute care hospital that is part of a medically prescribed period of recovery.

(5) **DADS**--Department of Aging and Disability Services. For purposes of the PASRR process, DADS is the state authority for intellectual and developmental disabilities.

(6) **DD**--Developmental disability. A disability that meets the criteria conditions described in the definition of "persons with related conditions" in Code of Federal Regulations (CFR) Title 42, §435.1010.

(7) **Delirium**--A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(8) **Designated resident**--A Medicaid recipient with ID or DD who is 21 years of age or older and who is a resident.

(9) **DSHS**--Department of State Health Services. For purposes of the PASRR process, DSHS is the state mental health authority.

(10) **Emergency protective services**--Services that are furnished by the Department of Family and Protective Services to an elderly or disabled individual who has been determined to be in a state of abuse, neglect, or exploitation.

(11) **Exempted hospital discharge**--A category of nursing facility admission that occurs when a physician has certified that an individual who is being discharged from a hospital is likely to require less than 30 days of nursing facility services for the condition for which the individual was hospitalized.

(12) **Expedited admission**--A category of nursing facility admission that occurs when an individual meets the criteria for one of the following categories: convalescent care, terminal illness, severe

physical illness, delirium, emergency protective services, respite, or coma.

(13) **ID**--Intellectual disability. Mental retardation, as described in CFR Title 42, §483.102(b)(3)(i).

(14) **IDT**--Interdisciplinary team. A team consisting of:

(A) a resident with MI, ID, or DD;

(B) the resident's LAR, if any;

(C) a registered nurse from the nursing facility with responsibility for the resident;

(D) a representative of a LIDDA or LMHA, or if the resident has MI and DD or MI and ID, a representative of the LIDDA and LMHA; and

(E) other persons, as follows:

(i) a concerned person whose inclusion is requested by the resident or LAR;

(ii) a person specified by the resident or LAR, nursing facility, or LIDDA or LMHA, as applicable, who is professionally qualified or certified or licensed with special training and experience in the diagnosis, management, needs and treatment of people with MI, ID, or DD; and

(iii) a representative of the appropriate school district if the resident is school age and inclusion of the district representative is requested by the resident or LAR.

(15) **Individual**--A person seeking admission to a nursing facility.

(16) **ISP**--Individual service plan. A service plan developed by the service planning team for a designated resident in accordance with §17.502(2) of this title (relating to Service Planning Team (SPT) Responsibilities for a Designated Resident).

(17) **LAR**--Legally authorized representative. A person authorized by law to act on behalf of an individual or resident with regard to a matter described by this subchapter, and who may be the parent of a minor child, the legal guardian, or the surrogate decision maker.

(18) **LIDDA**--Local intellectual and developmental disabilities authority. An entity designated by the executive commissioner of the Texas Health and Human Services Commission, in accordance with Texas Health and Safety Code §533.035.

(19) **LIDDA specialized services**--Support services, other than nursing facility services, that are identified through the PE or resident review and may be provided to a resident who has ID or DD. LIDDA specialized services are:

(A) service coordination, which includes alternate placement assistance;

(B) employment assistance;

(C) supported employment;

(D) day habilitation;

(E) independent living skills training; and

(F) behavioral support.

(20) **LMHA**--Local mental health authority. An entity designated by the executive commissioner of the Texas Health and Human Services Commission, in accordance with Texas Health and Safety Code §533.035. For the purposes of this subchapter, LMHA includes

an entity designated by the Department of State Health Services as the entity to perform PASRR functions.

(21) LMHA specialized services--Support services, other than nursing facility services, that are identified through the PE or resident review and may be provided to a resident who has MI. LMHA specialized services are defined in 25 TAC Chapter 412, Subchapter I (relating to MH Case Management), including alternate placement, and 25 TAC Chapter 416, Subchapter A (relating to Mental Health Rehabilitative Services).

(22) LTC Online Portal--Long Term Care Online Portal. A web-based application used by Medicaid providers to submit forms, screenings, evaluations, and the long term services and supports Medicaid identification section of the MDS assessment.

(23) MDS assessment--Minimum data set assessment. A standardized collection of demographic and clinical information that describes a resident's overall condition, which a licensed nursing facility in Texas is required to submit for a resident admitted into the facility.

(24) MI--Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(25) Nursing facility--A Medicaid-certified facility that is licensed in accordance with Texas Health and Safety Code, Chapter 242.

(26) Nursing facility PASRR support activities--Actions a nursing facility takes in coordination with a LIDDA or LMHA to facilitate the successful provision of LIDDA specialized services or LMHA specialized services, including:

(A) arranging transportation for a nursing facility resident to participate in a LIDDA specialized service or a LMHA specialized service outside the facility;

(B) sending a resident to a scheduled LIDDA specialized service or a LMHA specialized service with food and medications required by the resident; and

(C) including in the comprehensive care plan an agreement to avoid, when possible, scheduling nursing facility services at times that conflict with LIDDA specialized services or LMHA specialized services.

(27) Nursing facility specialized services--Support services, other than nursing facility services, that are identified through the PE and may be provided to a resident who has ID or DD. Nursing facility specialized services are:

(A) physical therapy, occupational therapy, and speech therapy;

(B) customized manual wheelchair; and

(C) durable medical equipment, which consists of:

(i) a gait trainer;

(ii) a standing board;

(iii) a special needs car seat or travel restraint;

(iv) a specialized or treated pressure-reducing support surface mattress;

(v) a positioning wedge;

(vi) a prosthetic device; and

(vii) an orthotic device.

(28) PASRR--Preadmission screening and resident review.

(29) PASRR determination--A decision made by DADS, DSHS, or their designee regarding an individual's need for nursing facility specialized services, LIDDA specialized services, and LMHA specialized services, based on information in the PE; and, in accordance with Subchapter Y of this chapter (relating to Medical Necessity Determinations), whether the individual requires the level of care provided in a nursing facility. A report documenting the determination is sent to the individual and LAR.

(30) PE--PASRR Level II evaluation. A face-to-face evaluation of an individual suspected of having MI, ID, or DD performed by a LIDDA or an LMHA to determine if the individual has MI, ID, or DD, and if so to:

(A) assess the individual's need for care in a nursing facility;

(B) assess the individual's need for nursing facility specialized services, LIDDA specialized services and LMHA specialized services; and

(C) identify alternate placement options.

(31) PL1--PASRR Level I screening. The process of screening an individual to identify whether the individual is suspected of having MI, ID, or DD.

(32) Pre-admission--A category of nursing facility admission from a community setting that is not an expedited admission or an exempted hospital discharge.

(33) Referring entity--The entity that refers an individual to a nursing facility, such as a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(34) Resident--An individual who resides in a Medicaid-certified nursing facility and receives services provided by professional nursing personnel of the facility.

(35) Resident review--A face-to-face evaluation of a resident performed by a LIDDA or LMHA:

(A) for a resident with MI, ID, or DD who experienced a significant change in status, to:

(i) assess the resident's need for continued care in a nursing facility;

(ii) assess the resident's need for nursing facility specialized services, LIDDA specialized services and LMHA specialized services; and

(iii) identify alternate placement options; and

(B) for a resident suspected of having MI, ID, or DD, to determine whether the resident has MI, ID, or DD and, if so:

(i) assess the resident's need for continued care in a nursing facility;

(ii) assess the resident's need for nursing facility specialized services, LIDDA specialized services, and LMHA specialized services; and

(iii) identify alternate placement options.

(36) Respite--Services provided on a short-term basis to an individual because of the absence of or the need for relief by the individual's unpaid caregiver for a period not to exceed 14 days.

(37) Service coordination--As defined in §2.553 of this title (relating to Definitions), assistance in accessing medical, social, edu-

ational, and other appropriate services and supports that will help an individual achieve a quality of life and community participation acceptable to the person and LAR on the individual's behalf.

(38) Service coordinator--An employee of a LIDDA who provides service coordination.

(39) Severe physical illness--An illness resulting in ventilator dependence or diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from nursing facility specialized services, LIDDA specialized services and LMHA specialized services.

(40) SPT--Service planning team. A team that develops, reviews, and revises the ISP for a designated resident.

(A) The SPT always includes:

- (i) the designated resident;
- (ii) the designated resident's LAR, if any;
- (iii) the service coordinator;
- (iv) nursing facility staff familiar with the designated resident's needs;
- (v) persons providing nursing facility specialized services and LIDDA specialized services for the designated resident;
- (vi) a representative from a community provider, if one has been selected; and
- (vii) a representative from the LMHA, if the designated resident has MI.

(B) Other participants on the SPT may include:

- (i) a concerned person whose inclusion is requested by the designated resident or the LAR; and
- (ii) at the discretion of the LIDDA, a person who is directly involved in the delivery of services to people with ID or DD.

(41) Surrogate decision maker--An actively involved family member of a resident who has been identified by an IDT in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent on behalf of the resident.

(42) Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course, which is documented by a physician's certification in the individual's medical record maintained by a nursing facility.

(43) Transition plan--A plan developed by the SPT that describes the activities, timetable, responsibilities, services, and supports involved in assisting a designated resident to transition from the nursing facility to the community.

*§19.2704. Nursing Facility Responsibilities Related to PASRR.*

(a) If an individual seeks admission to a nursing facility, the nursing facility:

- (1) must coordinate with the referring entity to ensure the referring entity conducts a PL1; and
- (2) may provide assistance in completing the PL1, if the referring entity is a family member, LAR, other personal representative selected by the individual, or a representative from an emergency placement source and requests assistance in completing the PL1.

(b) A nursing facility must not admit an individual who has not had a PL1 conducted before the individual is admitted to the facility.

(c) If an individual's PL1 indicates the individual is not suspected of having MI, ID, or DD, a nursing facility must enter the PL1 from the referring entity into the LTC Online Portal. The nursing facility may admit the individual into the facility through the routine admission process.

(d) For an individual whose PL1 indicates the individual is suspected of having MI, ID, or DD, a nursing facility:

(1) must enter the PL1 into the LTC Online Portal if the individual's admission category is:

- (A) expedited admission; or
- (B) exempted hospital discharge; and

(2) must not enter the PL1 into the LTC Online Portal if the individual's admission category is pre-admission.

(e) Except as provided by subsection (f) of this section, a nursing facility must not admit an individual whose PL1 indicates a suspicion of MI, ID, or DD without a complete PE and PASRR determination.

(f) A nursing facility may admit an individual whose PL1 indicates a suspicion of MI, ID, or DD without a complete PE and PASRR determination only if the individual:

- (1) is admitted as an expedited admission;
- (2) is admitted as an exempted hospital discharge; or

(3) has not had an interruption in continuous nursing facility residence other than for acute care lasting fewer than 30 days and is returning to the same nursing facility.

(g) A nursing facility must check the LTC Online Portal daily for messages related to admissions and directives related to the PASRR process.

(h) Within seven calendar days after the LIDDA or LMHA has entered a PE or resident review into the LTC Online Portal for an individual or resident who has MI, ID, or DD, a nursing facility must:

(1) review the recommended list of nursing facility specialized services, LIDDA specialized services, and LMHA specialized services; and

(2) certify in the LTC Online Portal whether the individual's or resident's needs can be met in the nursing facility.

(i) After an individual or resident who is determined to have MI, ID, or DD from a PE or resident review has been admitted to a nursing facility, the facility must:

(1) contact the LIDDA or LMHA within two calendar days after the individual's admission or, for a resident, within two calendar days after the LTC Online Portal generated an automated notification to the LIDDA or LMHA, to schedule an IDT meeting to discuss nursing facility specialized services, LIDDA specialized services, and LMHA specialized services;

(2) convene the IDT meeting within 14 calendar days after admission or, for a resident review, within 14 calendar days after the LTC Online Portal generated an automated notification to the LIDDA or LMHA;

(3) participate in the IDT meeting to:

(A) identify which of the nursing facility specialized services, LIDDA specialized services, and LMHA specialized services recommended for the resident that the resident, or LAR on the resident's behalf, wants to receive; and

(B) determine whether the resident is best served in a facility or community setting.

(4) provide staff from the LIDDA and LMHA access to the resident and the resident's clinical facility records upon request from the LIDDA or LMHA;

(5) enter into the LTC Online Portal within 3 business days after the IDT meeting for a resident:

(A) the date of the IDT meeting;

(B) the name of the persons who participated in the IDT meeting;

(C) the nursing facility specialized services, LIDDA specialized services, and LMHA specialized services that were agreed to in the IDT meeting; and

(D) the determination of whether the resident is best served in a facility or community setting;

(6) include in the comprehensive care plan:

(A) the nursing facility specialized services agreed to by the resident or LAR; and

(B) the nursing facility PASRR support activities;

(7) if Medicaid or other funding is available:

(A) initiate nursing facility specialized services within 30 days after the date that the services are agreed to in the IDT meeting; and

(B) provide nursing facility specialized services agreed to in the IDT meeting to the resident; and

(8) for a resident who is a Medicaid recipient, annually document in the LTC Online Portal all nursing facility specialized services, LIDDA specialized services, and LMHA specialized services currently being provided to a resident.

*§19.2706. Nursing Facility Responsibilities Related to a Designated Resident.*

(a) A nursing facility employee, nursing facility contractor, or nursing facility specialized services provider must report to the LIDDA the identity of any designated resident who expresses an interest in transitioning to the community.

(b) For a designated resident, a nursing facility must designate staff and necessary contractors to be members of the resident's SPT.

(c) A nursing facility must ensure its staff and contractors who are members of a designated resident's SPT:

(1) attend and participate in a designated resident's SPT meetings as scheduled and convened by the service coordinator;

(2) contribute to the development of a designated resident's ISP; and

(3) assist the SPT by:

(A) monitoring all nursing facility specialized services, LIDDA specialized services and LMHA specialized services, if applicable, provided to the resident to ensure the resident's needs are being met;

(B) making timely referrals, service changes, and amendments to the ISP as needed;

(C) ensuring that the resident's ISP, including nursing facility specialized services, nursing facility PASRR support activities,

and LIDDA specialized services, is coordinated with the nursing facility's comprehensive care plan;

(D) developing a transition plan for a resident who has expressed interest in community living and, if no transition plan is recommended due to identified barriers, participating to identify the action the SPT will take to address concerns and remove the barriers; and

(E) reviewing and discussing the information included in the ISP and transition plan with key nursing facility staff who work with the resident.

(d) A nursing facility must allow a service coordinator access to:

(1) a designated resident on a monthly basis, or more frequently if needed; and

(2) the designated resident's clinical facility records.

*§19.2708. Educational and Informational Activities for Residents.*

A nursing facility must:

(1) allow access to residents by representatives of the Office of the State Long Term Care Ombudsman and Disability Rights Texas to educate and inform them of their rights and options related to PASRR;

(2) allow access to designated residents to support educational activities about community living options arranged by the LIDDA; and

(3) provide a designated resident with adequate notice and assistance to be prepared for and participate in scheduled community visits.

*§19.2709. Incident and Complaint Reporting.*

In addition to reporting incidents and complaints, including abuse and neglect, to DADS as required by §19.602 of this chapter (relating to Incidents of Abuse and Neglect Reportable to the Texas Department of Aging and Disability Services (DADS) and Law Enforcement Agencies by Facilities) and §19.2006 of this chapter (relating to Reporting Incidents and Complaints), a nursing facility must report the information by making a telephone report immediately after learning of the incident or complaint:

(1) to the service coordinator, if it involves a designated resident; and

(2) to the LMHA representative, if it involves a resident with MI receiving LMHA specialized services.

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

Filed with the Office of the Secretary of State on June 17, 2015.

TRD-201502324

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: July 7, 2015

Proposal publication date: April 3, 2015

For further information, please call: (210) 619-8292



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Education Agency

### Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 102, Educational Programs, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 102 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs; Subchapter BB, Commissioner's Rules Concerning Master Teacher Grant Programs; Subchapter CC, Commissioner's Rules Concerning Coordinated Health Programs; Subchapter DD, Commissioner's Rules Concerning the Texas Accelerated Science Achievement Program Grant; Subchapter EE, Commissioner's Rules Concerning Pilot Programs, §§102.1051, 102.1053, 102.1055-102.1057; Subchapter FF, Commissioner's Rules Concerning Educator Award Programs, §102.1073; Subchapter GG, Commissioner's Rules Concerning College and Career Readiness School Models; Subchapter HH, Commissioner's Rules Concerning the Texas Adolescent Literacy Academies; and Subchapter II, Commissioner's Rules Concerning Texas High Performance Schools Consortium.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 102, Subchapters AA-DD; Subchapter EE, §§102.1051, 102.1053, and 102.1055-102.1057; Subchapter FF, §102.1073; and Subchapters GG-II, continue to exist.

The public comment period on the review of 19 TAC Chapter 102, Subchapters AA-DD; Subchapter EE, §§102.1051, 102.1053, and 102.1055-102.1057; Subchapter FF, §102.1073; and Subchapters GG-II, begins July 3, 2015, and ends August 3, 2015. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-5337.

Chapter 102, Subchapter EE, Commissioner's Rules Concerning Pilot Programs, §102.1054, Intensive Summer Pilot Program, is not subject to rule review since the rule will be repealed. Changes enacted by the legislature to the TEC, §29.098, removed the directive for the commissioner to adopt rules to implement an intensive summer pilot program. The following rules will also be repealed and, therefore, are not subject to rule review: Chapter 102, Subchapter EE, §102.1058, Technology-Based Supplemental Instruction Pilot Program; and Subchapter FF, §102.1071, Governor's Educator Excellence Award Program--Texas Educator Excellence Grant. The statutory authority for each of these rules has been repealed.

TRD-201502421

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: June 24, 2015



State Board for Educator Certification

### Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 233, Categories of Classroom Teaching Certificates, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 233 continue to exist.

The public comment period on the review of 19 TAC Chapter 233 begins July 3, 2015, and ends August 3, 2015. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 233 at the August 7, 2015 meeting in accordance with the SBEC board operating policies and procedures. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.texas.gov](mailto:sbecrules@tea.texas.gov) or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201502369

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Filed: June 22, 2015



The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 244, Certificate of Completion of Training for Appraisers, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 244 continue to exist.

The public comment period on the review of 19 TAC Chapter 244 begins July 3, 2015, and ends August 3, 2015. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter

244 at the August 7, 2015 meeting in accordance with the SBEC board operating policies and procedures. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.texas.gov or faxed to (512) 463-5337. Comments should be identified as "SBEC Rule Review."

TRD-201502370

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Filed: June 22, 2015

## Adopted Rule Reviews

Texas Department of Banking

### Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments) in its entirety, specifically Subchapter A (Lending Limits) comprised of §§12.1 - 12.12; Subchapter B (Loans) comprised of §§12.31 - 12.33; Subchapter C (Investment Limits) comprised of §12.61 and §12.62; and Subchapter D (Investments) comprised of §12.91.

Notice of the review of Chapter 12 was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2423). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039. This concludes the rule review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments).

TRD-201502346

Catherine Reyer

General Counsel

Texas Department of Banking

Filed: June 19, 2015

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 25 (Prepaid Funeral Contracts), specifically Subchapter A (Contract Forms) comprised of §§25.1 - 25.9; and Subchapter B (Regulation of Licenses) comprised of §§25.10 - 25.14, 25.17 - 25.19, 25.21 - 25.25, 25.31 and 25.41.

Notice of the review of Chapter 25 was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2423). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039. This concludes the rule review of Texas Administrative Code, Title 7, Chapter 25 (Prepaid Funeral Contracts).

TRD-201502347

Catherine Reyer

General Counsel

Texas Department of Banking

Filed: June 19, 2015

◆ ◆ ◆  
Credit Union Department

### Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code Title 7, §91.801 (Investments in Credit Union Service Organizations), §91.804 (Custody and Safekeeping), §91.808 (Reporting Investment Activities to the Board of Directors), and §91.902 (Dividends), as published in the April 3, 2015, issue of the *Texas Register* (40 TexReg 1997). The Commission readopts these rules.

The rules were reviewed as a result of the Credit Union Department (Department)'s general rule review.

The Commission received no comments on the readoption of these rules without changes. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§91.801, 91.804, 91.808, and 91.902 continue to exist, and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201502355

Harold E. Feeney

Commissioner

Credit Union Department

Filed: June 19, 2015

◆ ◆ ◆  
State Board for Educator Certification

### Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, pursuant to the Texas Government Code, §2001.039. The rules reviewed by the SBEC in 19 TAC Chapter 249 are organized under the following subchapters: Subchapter A, General Provisions; Subchapter B, Enforcement Actions and Guidelines; Subchapter C, Prehearing Matters; Subchapter D, Hearing Procedures; and Subchapter E, Post-Hearing Matters. The SBEC proposed the review of 19 TAC Chapter 249 in the April 24, 2015 issue of the *Texas Register* (40 TexReg 2287).

Relating to the review of 19 TAC Chapter 249 the SBEC finds that the reasons for the adoption of Subchapters A-E continue to exist and readopts the rules.

The SBEC received no comments related to the review of 19 TAC Chapter 249.

This concludes the review of 19 TAC Chapter 249.

TRD-201502371

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Filed: June 22, 2015

◆ ◆ ◆  
Finance Commission of Texas

### Title 7, Part 1

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), specifically Subchapter

A (General) comprised of §§9.1 - 9.3; Subchapter B (Contested Case Hearings) comprised of §§9.11 - 9.23 and §§9.25 - 9.39; Subchapter C (Appeals to Finance Commission) comprised of §9.51, §9.52 and §§9.54 - 9.57; Subchapter D (Court Appeals) comprised of §9.71 and §9.72; and Subchapter E (Rulemaking) comprised of §§9.81 - 9.84.

Notice of the review of Chapter 9 was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2423). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039. This concludes the rule review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemaking).

TRD-201502348  
Catherine Reyer  
General Counsel  
Finance Commission of Texas  
Filed: June 19, 2015

◆ ◆ ◆

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas

Administrative Code, Title 7, Chapter 10 (Contract Procedures), specifically Subchapter A (Negotiation and Mediation) comprised of §§10.1 - 10.21; and Subchapter B (Contract Protests) comprised of §10.30.

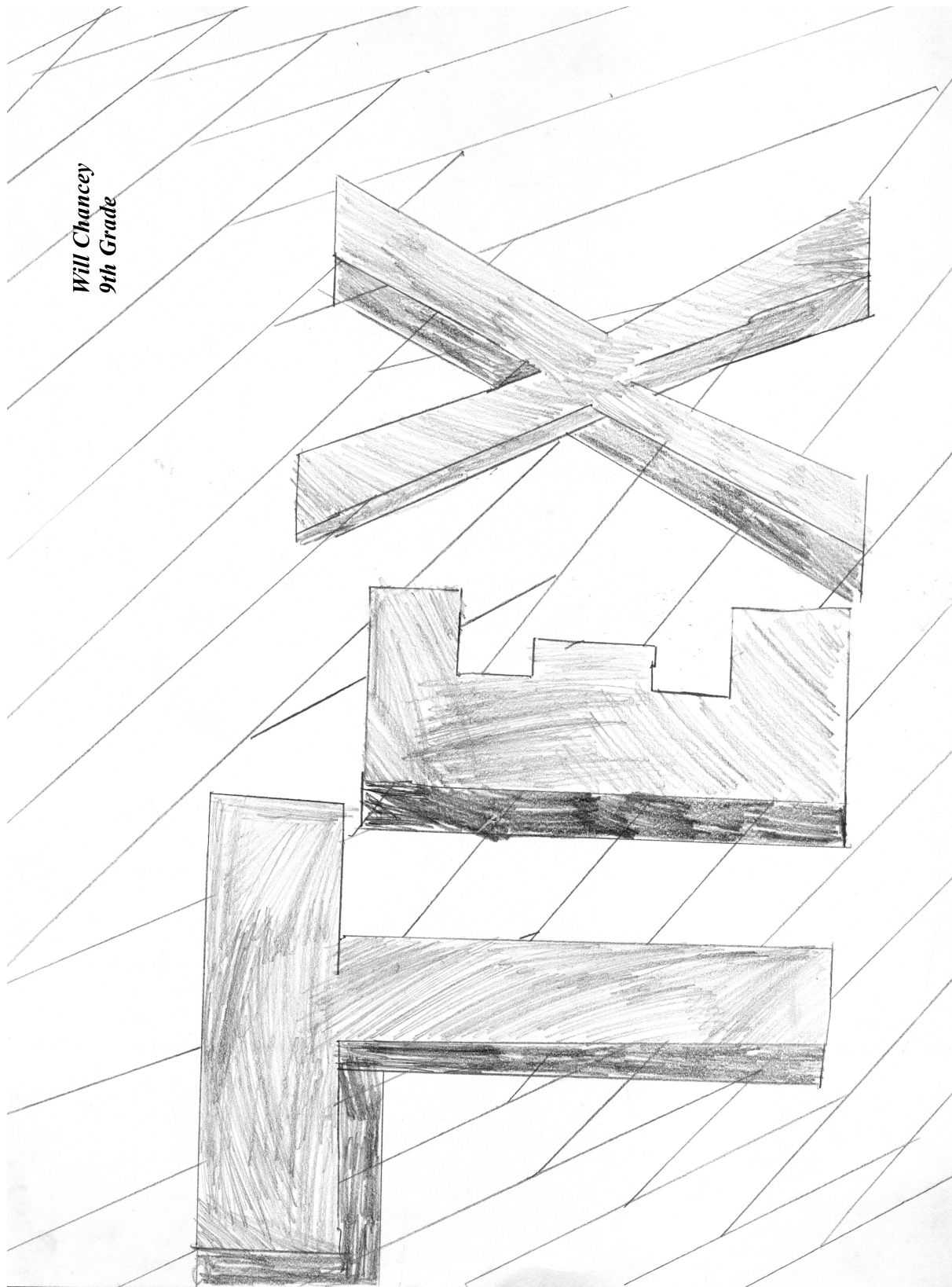
Notice of the review of Chapter 10 was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2424). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039. This concludes the rule review of Texas Administrative Code, Title 7, Chapter 10 (Contract Procedures).

TRD-201502349  
Catherine Reyer  
General Counsel  
Finance Commission of Texas  
Filed: June 19, 2015

◆ ◆ ◆

*Will Chancey  
9th Grade*





# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Texas Health and Safety and 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 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: *Hunt County, Texas the Town of St. Paul, Texas, and the State of Texas v. Thermo-Fisher Scientific, Inc., Con-Way Freight, Inc., H.M. Dunn, Inc., and Texas Strikeforce, Inc.*, Cause No. D-1-GN-13-004314; in the 126th Judicial District Court, Travis County, Texas.

Nature of Defendants' Operations: On or about December 28, 2012, persons later identified as former employees of Texas Strikeforce, Inc., dumped at least five 55-gallon barrels of mixed hazardous materials and other waste into a drainage ditch in Hunt County, near St. Paul, Texas. The ditch ultimately discharges into Lake Tawakoni, a source of drinking water for many communities. Some of the labeled waste indicated that Thermo-Fisher Scientific, Inc. was the generator of the waste in at least one of the five barrels dumped into the drainage ditch. Con-Way Freight Inc. then transported the waste from Thermo-Fisher Scientific, Inc. before it was illegally dumped.

Proposed Agreed Judgment: The Agreed Partial Judgment orders Thermo-Fisher Scientific, Inc. to pay civil penalties in the amount of \$7,549 to be divided equally between the State and Hunt County, with Hunt County splitting its share equally with St. Paul. The Judgment orders Con-Way Freight, Inc. to pay civil penalties in the amount of \$7,549 to be divided equally between the State and Hunt County, with Hunt County splitting its share equally with St. Paul. The Judgment also awards attorney's fees to the State in the amount of \$6,337.

For a complete description of the proposed settlement, the complete proposed Agreed Partial Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, 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-201502409  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: June 23, 2015

### Texas Water Code and Texas Health and Safety Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Christopher W. Duncan and Christina Duncan, individually and d/b/a Lakeside Water Company*; Cause No. D-1-GV-14-000369; in the 200th Judicial District Court, Travis County, Texas.

Background: This case concerns the operation of a public drinking water system. The State initiated the suit on behalf of the Texas Commission on Environmental Quality (TCEQ). Defendants Christopher Duncan and Christina Duncan (the Duncans) own and operate a public drinking water system located at or about 28654 South U.S. Highway 69 in Zavalla, Angelina County, Texas (the Site). The Duncans have failed to comply with TCEQ rules governing the technical and monitoring/reporting requirements of public water systems since at least 2010.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction, which provides for an award of civil penalties against the Duncans in the amount of \$10,000, in addition to past due penalties and fees. The Duncans must immediately begin corrective actions at the Site in accordance with TCEQ rules, and submit a Monitoring Plan for the next five years to the TCEQ. The proposed settlement also includes an award of the State's reasonable attorney's fees incurred in prosecuting this case.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas, and copies may be obtained in person or by mail for the cost of copying. A copy is also lodged with the Travis County District Court. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Craig J. Pritzlaff, 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.

TRD-201502393  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: June 22, 2015

## Brazos Valley Council of Governments

Targeted Occupation List

The Workforce Solutions Brazos Valley Board seeks public comment on an update to the Targeted Occupations List for the time period June 22, 2015, to July 21, 2015. The Targeted Occupation List is used to provide Workforce Investment Act (WIA), Workforce Innovation Opportunity Act (WIOA), TANF-Choices, SNAP and Non-Custodial Parent (NCP) program training for eligible customers to achieve self-sufficient wages. A copy of this may be viewed at the Workforce Solutions office located at 3991 East 29th, Bryan, Texas 77802 between 8:00 a.m. and 5:00 p.m., Monday through Friday, for the period June 22, 2015, to July 21, 2015.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

Relay Texas (800) 735-2989, TDD (800) 735-2988 (Voice), TTY (979) 595-2819.

TRD-201502384

Tom Wilkinson

Executive Director

Brazos Valley Council of Governments

Filed: June 22, 2015

◆ ◆ ◆  
**Central Texas Council of Governments**

**Contract Award Announcement**

This contract award notice is being submitted by the Killeen-Temple Metropolitan Planning Organization (KTMPPO) with regard to a contract awarded to provide general planning services. A contract was awarded to the following:

Alliance Transportation Group

11500 Metric Blvd., Bldg. M-1, Suite 150

Austin, TX 78758

Contract executed on June 12, 2015

Contract expires on September 30, 2018

CDM Smith, Inc.

3050 Post Oak Blvd., Suite 300

Houston, TX 77056

Contract executed on June 17, 2015

Contract expires on September 30, 2018

Kimley-Horn & Associates, Inc.

12750 Merit Drive, Suite 1000

Dallas, TX 75251

Contract executed on June 17, 2015

Contract expires on September 30, 2018

TRD-201502362

Cheryl Maxwell

Sr. Planner, KTMPPO

Central Texas Council of Governments

Filed: June 19, 2015

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/29/15 - 07/05/15 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/29/15 - 07/05/15 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-201502400

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 23, 2015

◆ ◆ ◆  
**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 August 3, 2015. 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 August 3, 2015. 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: Allied Equipment, Incorporated; DOCKET NUMBER: 2015-0503-AIR-E; IDENTIFIER: RN103113692; LOCATION: Odessa, Ector County; TYPE OF FACILITY: equipment manufacturing plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance overspray conditions; PENALTY: \$1,562; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(2) COMPANY: ALTOGA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-0527-PWS-E; IDENTIFIER: RN101436152; LOCATION: Princeton, Collin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(2) and (4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine in the water entering the distribution system and throughout the distribution system at all times; and 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe that cross connections or other potential contamination hazards exist; PENALTY: \$1,205; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Benjamin Munoz dba Benjamin Custom Paint and Body; DOCKET NUMBER: 2015-0258-AIR-E; IDENTIFIER: RN107834202; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: auto paint and body shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating a source of air emissions; 30 TAC §115.422(1)(C) and THSC, §382.085(b), by failing to maintain all waste solvents in closed containers; and 30 TAC §115.426(1)(A) and (B) and THSC, §382.085(b), by failing to maintain records; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Joaquin; DOCKET NUMBER: 2015-0440-PWS-E; IDENTIFIER: RN101226686; LOCATION: Joaquin, Shelby County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide the public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the month of April 2011; 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the June 1, 2014 - September 30, 2014 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide the public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the month of June 2014; PENALTY: \$390; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Leander and Rockin Q Construction, LLC; DOCKET NUMBER: 2015-0445-WQ-E; IDENTIFIER: RN107739658; LOCATION: Leander, Williamson County; TYPE OF FACILITY: water line construction project; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities under Texas Pollutant Discharge Elimination System Construction General Permit Number TXR150000; and TWC, §26.121(a), by failing to prevent the discharge of sediment into or adjacent to any water in the state; PENALTY: \$1,876; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL

OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(6) COMPANY: City of San Juan; DOCKET NUMBER: 2014-1350-MWD-E; IDENTIFIER: RN102180973; LOCATION: San Juan, Hidalgo 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 WQ0011512001, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 002, by failing to comply with permitted effluent limitations; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Dimmit County; DOCKET NUMBER: 2015-0462-PWS-E; IDENTIFIER: RN101250025; LOCATION: Catarina, Dimmit County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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; PENALTY: \$105; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: GOLDEN SPREAD ELECTRIC COOPERATIVE, INCORPORATED; DOCKET NUMBER: 2015-0575-PWS-E; IDENTIFIER: RN101286433; LOCATION: Denver City, Yoakum County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: \$732; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(9) COMPANY: HAJARAT CORPORATION dba Corner Food Store; DOCKET NUMBER: 2015-0500-PST-E; IDENTIFIER: RN102483211; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$5,401; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Hondo Independent School District; DOCKET NUMBER: 2015-0464-PST-E; IDENTIFIER: RN102364932; LOCATION: Hondo, Medina County; TYPE OF FACILITY: fleet refueling facility; 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: \$3,000; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Maria Medeles dba Magnolia Gardens and Princess, Incorporated dba Magnolia Gardens; DOCKET NUMBER: 2015-0490-PWS-E; IDENTIFIER: RN101225142; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Number 1; 30 TAC §290.46(s), by failing to ensure that accurate testing equipment or some other means of monitoring the effectiveness

of any chemical treatment or pathogen inactivation or removal process is used by the system; 30 TAC §290.46(f)(2) and (3)(B)(iii), by failing to make water works operation and maintenance records readily available for review by commission personnel upon request; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.42(1), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91011060 for Fiscal Year 2015; PENALTY: \$412; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Michael R. Thorp; DOCKET NUMBER: 2015-0864-MLM-E; IDENTIFIER: RN108195058; LOCATION: Mertzon, Irion County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an OSSF; and 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$350; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(13) COMPANY: North Central Texas Municipal Water Authority; DOCKET NUMBER: 2015-0499-PWS-E; IDENTIFIER: RN102692019; LOCATION: Munday, Knox County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$345; ENFORCEMENT COORDINATOR: Michaëlle Garza, (210) 403-4076; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: OUTSIDE NEPAL, LLC dba Oate Food Mart; DOCKET NUMBER: 2015-0198-PST-E; IDENTIFIER: RN101542611; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: PACIFIC BUSINESS, LLC. dba Pride Food Store; DOCKET NUMBER: 2015-0380-PST-E; IDENTIFIER: RN100760578; LOCATION: Allen, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Ranger Utility Company; DOCKET NUMBER: 2012-1692-PWS-E; IDENTIFIER: RN101273761; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: public water supply;

RULES VIOLATED: 30 TAC §290.110(c)(4)(A) and TCEQ Agreed Order Docket Number 2010-0867-PWS-E, Ordering Provision Number 2.a., by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code (THSC), §341.0315(c) and TCEQ Agreed Order Docket Number 2010-0867-PWS-E, Ordering Provision Number 2.c.i., by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c) and TCEQ Agreed Order Docket Number 2010-0867-PWS-E, Ordering Provision Number 2.c.ii., by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; PENALTY: \$16,568; ENFORCEMENT COORDINATOR: Andrea Linson, (512) 239-1482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: RHINELAND WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-0497-PWS-E; IDENTIFIER: RN101196376; LOCATION: Munday, Knox County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$172; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(18) COMPANY: Romualdo Soto, Jr.; DOCKET NUMBER: 2015-0543-WQ-E; IDENTIFIER: RN106945223; LOCATION: Horizon City, El Paso County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the registration of an APO annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(19) COMPANY: SHADY GROVE NUMBER 2 WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-0357-PWS-E; IDENTIFIER: RN101457760; LOCATION: Sulphur Springs, Hopkins County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter for the fourth quarter of 2013 through the third quarter of 2014 and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit DLQORs for the fourth quarter of 2013 through the second quarter of 2014; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the years 2011 - 2013; PENALTY: \$490; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: SPORT HARBOUR LLC; DOCKET NUMBER: 2015-0179-MWD-E; IDENTIFIER: RN101611200; LOCATION: Montgomery, 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 (TPDES) Permit Number WQ0011693001, Effluent Limitations and

Monitoring Requirements Number 1 and 6, by failing to comply with permitted effluent limits; PENALTY: \$4,013; ENFORCEMENT COORDINATOR: Christopher Bost, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Stephen T. Dougherty; DOCKET NUMBER: 2015-0812-WR-E; IDENTIFIER: RN101658250; LOCATION: Beeville, Bee County; TYPE OF FACILITY: tributary; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(22) COMPANY: WINDSOR WATER COMPANY; DOCKET NUMBER: 2015-0617-PWS-E; IDENTIFIER: RN101455640; LOCATION: Waco, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: \$148; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201502403

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 23, 2015



#### Correction of Error

The Texas Commission on Environmental Quality adopted revisions to 30 TAC Chapter 101 in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3848). A numbering error occurred in Subchapter H, Division 4, §101.370, which begins on page 3896. On page 3897, second column, paragraph number (21) was omitted. Section 101.370(22) - (35) should have been numbered as §101.370(21) - (34).

TRD-201502422



#### Enforcement Orders

An agreed order was entered regarding Sur Valley Transport Company, Docket No. 2010-0089-PST-E on June 4, 2015 assessing \$8,500 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 LIVE OAK RESORT, INC., Docket No. 2013-0866-WQ-E on June 4, 2015 assessing \$45,000 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 City of Krumb, Docket No. 2013-1358-MWD-E on June 4, 2015 assessing \$74,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Charles Green dba GTS Green's Tire Service, Docket No. 2014-0521-MSW-E on June 4, 2015 assessing \$1,375 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.

A default order was entered regarding GOOD TIME STORES, INC. dba Good Time Store 61, Docket No. 2014-0750-PST-E on June 4, 2015 assessing \$1,860 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.

A default order was entered regarding Kyle Freeman, Docket No. 2014-1008-PWS-E on June 4, 2015 assessing \$4,101 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 CRYSTAL CLEAR WATER SUPPLY CORPORATION, Docket No. 2014-1175-PWS-E on June 4, 2015 assessing \$8,100 in administrative penalties with \$1,620 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fritch, Docket No. 2014-1227-PWS-E on June 4, 2015 assessing \$3,220 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Harker Heights, Docket No. 2014-1276-MWD-E on June 4, 2015 assessing \$7,500 in administrative penalties.

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.

An agreed order was entered regarding NORTH CHEROKEE WATER SUPPLY CORPORATION, Docket No. 2014-1290-PWS-E on June 4, 2015 assessing \$2,574 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2014-1428-AIR-E on June 4, 2015 assessing \$19,689 in administrative penalties with \$3,937 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2014-1437-AIR-E on June 4, 2015 assessing \$12,688 in administrative penalties with \$2,537 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXI Operations, LP, Docket No. 2014-1441-AIR-E on June 4, 2015 assessing \$59,326 in administrative penalties with \$11,865 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sid Richardson Carbon, Ltd., Docket No. 2014-1460-AIR-E on June 4, 2015 assessing \$8,175 in administrative penalties with \$1,635 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2014-1484-AIR-E on June 4, 2015 assessing \$117,600 in administrative penalties with \$23,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Methodist Healthcare System of San Antonio, Ltd., L.L.P., Docket No. 2014-1495-PST-E on June 4, 2015 assessing \$7,517 in administrative penalties with \$1,503 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Traversari USA LLC dba Texaco 155, Docket No. 2014-1546-PST-E on June 4, 2015 assessing \$34,292 in administrative penalties with \$6,858 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2014-1550-AIR-E on June 4, 2015 assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stephenville, Docket No. 2014-1571-MWD-E on June 4, 2015 assessing \$17,250 in administrative penalties with \$3,450 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.

A default order was entered regarding Shawn M. Horvath dba Aero Valley Water Service, Docket No. 2014-1598-PWS-E on June 4, 2015 assessing \$95 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, 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 Irion County, Docket No. 2014-1653-MSW-E on June 4, 2015 assessing \$13,200 in administrative penalties with \$2,640 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fry Road Municipal Utility District, Docket No. 2014-1687-PWS-E on June 4, 2015 assessing \$315 in administrative penalties with \$315 deferred.

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.

An agreed order was entered regarding PORT ALTO HOMEOWNERS' ASSOCIATION DISTRICT #1, Inc., Docket No. 2014-1776-PWS-E on June 4, 2015 assessing \$650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Orange Water & Sewer, LLC, Docket No. 2014-1857-MWD-E on June 4, 2015 assessing \$27,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shah Bari and Suzana Saladin dba Peek Road Mobile Home Park, Docket No. 2014-0244-PWS-E on June 11, 2015 assessing \$2,494 in administrative penalties with \$498 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bradley Buckley, Docket No. 2014-0928-AGR-E on June 11, 2015 assessing \$1,312 in administrative penalties with \$262 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L.F. Manufacturing, Inc., Docket No. 2014-1066-IHW-E on June 11, 2015 assessing \$6,094 in administrative penalties with \$1,218 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 TEXAS HILL COUNTRY LANDSCAPING, INC., Docket No. 2014-1256-AIR-E on June 11, 2015 assessing \$1,312 in administrative penalties with \$262 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell-Milam-Falls Water Supply Corporation, Docket No. 2014-1569-PWS-E on June 11, 2015 assessing \$792 in administrative penalties with \$158 deferred.

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 ABF, INC. dba CLEARWATER DISTRIBUTION, Docket No. 2014-1729-PWS-E on June 11, 2015 assessing \$3,406 in administrative penalties with \$681 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Providence Village Water Control and Improvement District, Docket No. 2014-1745-PWS-E on June 11, 2015 assessing \$157 in administrative penalties with \$31 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Manvel, Docket No. 2014-1770-MWD-E on June 11, 2015 assessing \$3,175 in administrative penalties with \$635 deferred.

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 MAUKA WATER, LTD., Docket No. 2014-1778-PWS-E on June 11, 2015 assessing \$1,683 in administrative penalties with \$336 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elgin-Butler Company, Docket No. 2014-1805-AIR-E on June 11, 2015 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaid Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JJM DEVELOPMENT, INC., Docket No. 2014-1821-PWS-E on June 11, 2015 assessing \$262 in administrative penalties with \$52 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DACUS LAND & CATTLE CO., Docket No. 2014-1826-PWS-E on June 11, 2015 assessing \$328 in administrative penalties with \$65 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. SAFI ENTERPRISES INC. dba Goodys Food Store, Docket No. 2014-1838-PST-E on June 11, 2015 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHS Inc., Docket No. 2014-1891-PST-E on June 11, 2015 assessing \$6,109 in administrative penalties with \$1,221 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 Amber M. Memon dba M & M Food Mart 1, Docket No. 2014-1900-PST-E on June 11, 2015 assessing \$3,644 in administrative penalties with \$728 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rosebud-Lott Independent School District, Docket No. 2015-0005-PWS-E on June 11, 2015 assessing \$172 in administrative penalties with \$172 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abubaker Yusuf dba AY TEX PETROLEUM dba Texaco Station, Docket No. 2015-0032-PST-E on June 11, 2015 assessing \$3,375 in administrative penalties with \$675 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 Texaco Classic, Incorporated dba Texaco Classic, Docket No. 2015-0044-PST-E on June 11, 2015 assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kingsbridge Municipal Utility District, Docket No. 2015-0047-PWS-E on June 11, 2015 assessing \$945 in administrative penalties with \$189 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LASS UTILITY SERVICE COMPANY INC, Docket No. 2015-0057-PWS-E on June 11, 2015 assessing \$183 in administrative penalties with \$36 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 City of Trinity, Docket No. 2015-0116-MSW-E on June 11, 2015 assessing \$1,375 in administrative penalties with \$275 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Humble Partners Limited Partnership, Docket No. 2015-0122-MWD-E on June 11, 2015 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Katelyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southeast Deaf Smith County Wind Farm, L.L.C., Docket No. 2015-0123-MLM-E on June 11, 2015 assessing \$2,646 in administrative penalties with \$529 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Casey Layne Vickrey, Docket No. 2015-0125-LII-E on June 11, 2015 assessing \$237 in administrative penalties with \$47 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AWSH-Q INC. dba Kool Corner, Docket No. 2015-0132-PST-E on June 11, 2015 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAIT-TEK, INC., Docket No. 2015-0199-IHW-E on June 11, 2015 assessing \$2,813 in administrative penalties with \$562 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nazmuddin Chandani dba Huntsville Food Mart 1, Docket No. 2015-0205-PST-E on June 11, 2015 assessing \$3,493 in administrative penalties with \$698 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Platinum Jubilee, Inc. dba Fuzzy's 7, Docket No. 2015-0207-PST-E on June 11, 2015 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHIFA ENTERPRISES INC dba 181 Super Stop, Docket No. 2015-0228-PST-E on June 11, 2015 assessing \$3,750 in administrative penalties with \$750 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 City of Dallas, Docket No. 2015-0234-PST-E on June 11, 2015 assessing \$3,375 in administrative penalties with \$675 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 Star Transport, L.L.C. (aka LDR Transport, L.L.C.), Docket No. 2015-0244-PST-E on June 11, 2015 assessing \$1,350 in administrative penalties with \$270 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 Baybrook Municipal Utility District 1, Docket No. 2015-0253-PWS-E on June 11, 2015 assessing \$330 in administrative penalties with \$66 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RINZIM INVESTMENTS, INC dba Stop N Shop, Docket No. 2015-0262-PST-E on June 11, 2015 assessing \$1,562 in administrative penalties with \$312 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding P.C. Contractors L.L.C., Docket No. 2015-0512-WQ-E on June 11, 2015 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201502417





## Notice of District Petition

TCEQ Internal Control No. D-03062015-014; Talty Water Supply Corporation (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert Talty Water Supply Corporation to Talty Special Utility District of Kaufman County. Talty Special Utility District's business address will be: P.O. Box 890, 12475 Windy Lane, Forney, Texas 75126. The petition was filed pursuant to Chapter 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Talty Water Supply Corporation and the organization, creation and establishment of Talty Special Utility District of Kaufman County under the provisions of Article XVI, §59 of the Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, as amended. The nature of the services presently performed by Talty Water Supply Corporation are to supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. The nature of the services proposed to be provided by Talty Special Utility District of Kaufman County are to supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers.

TCEQ Internal Control No. D-02062015-019; Zamin, LP (Petitioner) filed a petition for creation of Williamson County Municipal Utility District No. 30 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is only one lienholder, Broadway National Bank, on the property to be included in the proposed District and the before mentioned entity has consented to the petition; (3) the proposed District will contain approximately 284.686 acres located within Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Georgetown, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 111114-J, passed and approved November 11, 2014, the City of Georgetown gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will purchase, construct, acquire, maintain, own, and operate water, wastewater, drainage, road, and parks and recreational facilities for commercial and residential purposes. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$39,205,000 (\$33,265,000 for utilities plus \$4,165,000 for roads plus \$1,775,000 for recreational facilities).

TCEQ Internal Control No. D-03312015-047; JM Texas Land Fund No. 6, L.P. ("Petitioner") filed a petition for creation of Harris County Municipal Utility District No. 506 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative

Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholder on the property to be included in the proposed District; (3) the proposed District will contain approximately 347.704 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2009-1329, effective December 22, 2009, the City of Houston gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for commercial and residential purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineering report filed simultaneously with the filing of this Petition, to which reference is hereby made for more detailed description; (4) purchase, construct, acquire, improve, maintain and operate such additional facilities, systems, plants and enterprises, as shall be consistent with all the purposes for which the District is created. Application material indicates the proposed District will also construct, acquire, maintain and operate parks and recreational facilities and design, acquire, construct, finance for and convey roads to the state, a county or a municipality for operation and maintenance.

## INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.texas.gov/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

◆ ◆ ◆  
Notice of Opportunity to Comment on Agreed Orders of  
Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 3, 2015**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 3, 2015**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: CHCA West Houston, L.P. dba West Houston Medical Center; DOCKET NUMBER: 2015-0171-PST-E; TCEQ ID NUMBER: RN102609294; LOCATION: 12141 Richmond Avenue, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$5,460; STAFF ATTORNEY: Kendal Payne, Litigation Division, MC 175, (512) 239-1939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Justin Gray; DOCKET NUMBER: 2014-1275-MSW-E; TCEQ ID NUMBER: RN107121808; LOCATION: 7069 Hickory Hollow Drive, Lumberton, Hardin County; TYPE OF FACILITY: property; RULES VIOLATED: TWC, §26.121(a) and 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste into or adjacent to

water in the state; PENALTY: \$1,312; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Transam Petroleum, Inc. dba Tetco 665; DOCKET NUMBER: 2014-1285-PST-E; TCEQ ID NUMBER: RN102325834; LOCATION: 1712 West Scyene Road, Mesquite, Dallas County; TYPE OF FACILITY: an underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.246(a)(1), (3) - (6) and (b)(2), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency representatives; THSC, §382.085(b) and 30 TAC §115.248(2), by failing to ensure that another employee successfully completes the Stage II facility representative training within three months of the departure of the previously trained employee; THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.602(a), by failing to identify and designate at least one named individual for each class of operator - Class A, B, and C; PENALTY: \$19,473; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201502401  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: June 23, 2015

◆ ◆ ◆  
Notice of Opportunity to Comment on a Default Order of  
Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 3, 2015**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 3, 2015**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: CATALPA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-1612-PWS-E; TCEQ ID NUMBER: RN101247211; LOCATION: approximately one mile south of Interstate Highway 27 off Western Street on Catalpa Street, Amarillo, Randall County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter and by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit the DLQOR; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and by failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the January 1, 2013 - December 31, 2013 monitoring period; 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the January 1, 2003 - December 31, 2011 monitoring period; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay annual public health service fee and/or any associated late fees for TCEQ Financial Administration Account Number 91910006; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit DLQORs; PENALTY: \$690; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-201502402

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 23, 2015



### Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit

Proposed Permit No. 2385

APPLICATION. City of Sweetwater, P.O. Box 450, Sweetwater, Nolan County, Texas, 79556 has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize the

operation of a new Type IV Municipal Solid Waste Arid Exempt (AE) Landfill that will accept rubbish, construction/demolition waste and brush free of putrescible. The facility is located at 5254 North IH-20, Sweetwater, Nolan County, Texas, 79556. This application was submitted on April 14, 2015, and was received by the TCEQ on *April 22, 2015*. The permit application is available for viewing and copying at City of Sweetwater, City Hall, 200 E. 4th Street, Sweetwater, Nolan County, Texas, 79556. The following website provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.493004&lng=-100.320454&zoom=12&type=r>. For exact location, refer to application.

**ADDITIONAL NOTICE.** TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments.

Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** Your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and (I/we) request a contested case hearing. If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for

reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION** All public comments and requests must be submitted either electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at 800-687-4040. Si desea información en español, puede llamar al 800-687-4040.

Further information may also be obtained from City of Sweetwater at the address stated above or by calling Ms. Luci English, P.E., Enprotec/Hibbs & Todd, Inc. at (325) 698-5560.

TRD-201502414

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 24, 2015



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 17, 2015, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. VASAN, INC. d/b/a Mr. D's Convenience Store, Respondent; SOAH Docket No. 582-15-1630; TCEQ Docket No. 2014-0894-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against VASAN, INC. d/b/a Mr. D's Convenience Store on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201502416

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 24, 2015



### General Land Office

#### Notice and Opportunity to Comment on the Texas Coastal Management Program Section 309 Assessment and Strategies Report

The Texas Coastal Management Program (CMP) is seeking public comments on its draft Section 309 Program Assessment and Strategies Report: 2016-2020.

To maintain eligibility for grant funding under Section 309 of the Coastal Zone Management Act, the CMP must submit a Section 309 Assessment and Strategies Report to the National Oceanic and Atmospheric Administration Office for Coastal Management (NOAA-OCM) every five years. Development of the report follows the process outlined in NOAA's guidance document, *Coastal Zone Management Act, Section 309 Program Guidance, 2016 to 2020 Enhancement Cycle*. The report provides an assessment of the CMP in the nine enhancement areas, identifies program priorities, and proposes strategies that lead to tangible program enhancements for the identified high priority areas over the subsequent five years. The enhancement areas include: 1) wetlands, 2) coastal hazards, 3) public access, 4) marine debris, 5) cumulative and secondary impacts, 6) special area management plans, 7) ocean resources, 8) energy and government facility siting, and 9) aquaculture.

The 309 Assessment and Strategies process provides an opportunity for the CMP, with input from stakeholders and the public, to determine where strategic opportunities exist for enhancing the CMP in identified high priority enhancement areas. NOAA-OCM funding is made available to the CMP each year to implement these strategies. Final strategy tasks are subject to change and dependent upon availability of funding.

To review and comment on the draft Section 309 Assessment and Strategies Report, please go to <http://www.glo.texas.gov/what-we-do/caring-for-the-coast/public-notices/notice/cmp-requests-for-consistency-assessment-strategies.html>. You may also obtain a copy of the document by contacting Ms. Kate Zultner, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, (512) 936-9581, or via email at [kate.zultner@glo.texas.gov](mailto:kate.zultner@glo.texas.gov).

All comments must be received by July 28, 2015 and should be sent to Ms. Zultner at the mailing address or email address listed above or by filling out the form on the GLO's website, which can be found at the link listed above. The final 309 Assessment and Strategies Report will be submitted to NOAA-OCM for approval on September 1, 2015.

TRD-201502419

Anne L. Idsal

Chief Clerk

General Land Office

Filed: June 24, 2015



### Texas Health and Human Services Commission

#### Notice of Public Hearing on Proposed Attendant Compensation Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Wednesday, July 15, 2015, at 9:00 a.m. to receive public comment on proposed base rate increases for atten-

dant services provided under the following programs operated by the Department of Aging and Disability Services (DADS): Primary Home Care; Community Attendant Services; Family Care; Residential Care; Day Activity and Health Services; Medically Dependent Children Program; and Consumer Directed Services. The hearing will also receive public comment on proposed base rate increases for certain attendant and habilitation services provided under the Community First Choice (CFC) program operated by DADS and HHSC. Finally, the hearing will receive public comment on proposed base rate increases for the proxy rate for attendant services used in the calculation of the STAR+PLUS managed care capitation rates for the Home and Community-based Services (HCBS) risk group and its associated Consumer Directed Services rate.

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in the Public Hearing Room of the Brown Heatly Building, located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through Security at the front of the building facing Lamar Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing, so appropriate arrangements can be made.

**Proposal.** HHSC proposes to increase the base rates for Primary Home Care, Community Attendant Services, and Family Care Non-Priority Personal Attendant Services; Consumer-Managed Personal Assistance Services, Day Activity and Health Services; Residential Care; Medical Dependent Children Program Respite Services provided by an attendant; CFC State Plan (STAR+PLUS) Attendant and Habilitation Services, the proxy rate for attendant services used in the calculation of the STAR+PLUS managed care capitation rates for the HCBS risk group and all associated Consumer Directed Services. The proposed rates will be effective September 1, 2015, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

**Methodology and Justification.** The proposed payment rates incorporate provisions in the 2016-17 General Appropriations Act that included funds to support increases in the base wages of personal attendants to \$8.00 per hour. See General Appropriations Bill, 84th Leg., R.S., art. II, at II-131 (Health and Human Services Section, Special Provisions for all Health and Human Services Agencies, §47). HHSC calculated the proposed payment rates in accordance with the rate setting methodologies codified at Title 1, §355.112 of the TAC, relating to Attendant Compensation Rate Enhancement and Title 1, §355.9090 of the TAC, relating to Reimbursement Methodology for Community First Choice.

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on July 3, 2015. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). In addition, written comment may be sent by overnight mail or hand delivered to the Health and Human

Services Commission, Rate Analysis Department, H-400, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-201502391

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 22, 2015



## Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on July 15, 2015, at 11:00 a.m. to receive public comment on proposed rate increases for the following programs operated by the Department of Aging and Disability Services (DADS): non-state operated Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions; and the Home and Community-based Services waiver program.

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in the Public Hearing Room of the Brown Heatly Building, located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through Security at the front of the building facing Lamar Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing, so appropriate arrangements can be made.

**Proposal.** HHSC proposes to increase payment rates for non-state operated Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions and for certain services provided in the Home and Community-based Services waiver program. The proposed rates will be effective September 1, 2015, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

**Methodology and Justification.** The proposed payment rates incorporate provisions in the 2016-17 General Appropriations Act that included funds to support rate increases for non-state operated Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions and for rate increases for services determined not to be fully funded for the Home and Community-based Services waiver program. See General Appropriations Bill, 84th Leg., R.S., art. II, at II-18 (Department of Aging and Disability Services, Riders 39 and 40). HHSC calculated the proposed payment rates in accordance with the rate setting methodologies codified at Title 1, §355.456 and §355.723 of the Texas Administrative Code.

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on July 3, 2015. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). In addition, written comment may be

sent by overnight mail, special delivery mail or hand delivery to the Health and Human Services Commission, Rate Analysis Department, H-400, 4900 North Lamar Boulevard, Austin, Texas 78751. The following phone number can be used when submitting written comments via package delivery: (512) 730-7401.

TRD-201502392

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 22, 2015



## Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 17, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for EPSDT THSteps Personal Care Services and Community First Choice Personal Care Services. The proposed rate actions are based on direction provided by the 2016 - 2017 General Appropriations Act, 84th Legislature, Regular Session, Article II, Rider 50, at pages II-96 through II-98 (Health and Human Services Section, Health and Human Services Commission).

The public hearing will be held in the Department of State Health Services, Winters Building Public Hearing Room, 701 W. 51st Street, Austin, Texas. Entry is through security at the main entrance of the building facing W. 51st Street. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for EPSDT THSteps Personal Care Services and Community First Choice Personal Care Services are proposed to be effective September 1, 2015.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after July 3, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance so appropriate arrangements can be made.

TRD-201502424

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 24, 2015



## Notice of Public Hearing on Proposed Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 21, 2015, at 1:30 p.m. to receive public comment on proposed payment rates for services provided under the following programs operated by HHSC: Hospital Outpatient Imaging Services; Hospital Outpatient Reimbursement; and Hospital Inpatient Reimbursement.

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (1 TAC) §355.201, which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Public Hearing Room of the Brown Heatly Building, located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through Security at the front of the building facing Lamar Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing, so appropriate arrangements can be made.

**Proposal.** HHSC proposes to increase payment rates for the following:

- Rural Hospital Outpatient Imaging Services
- Rural Hospital Outpatient General Services
- Hospital Inpatient Trauma Add-on

In addition, HHSC proposes a new safety-net add-on for Hospital Inpatient Services.

The proposed rates will be effective September 1, 2015, and were determined in accordance with the rate setting methodologies described below under "Methodology and Justification."

**Methodology and Justification.** The proposed payment rates were determined in accordance with the 2016-17 General Appropriations Act (84th Leg., R.S., art. II, at II-122 to II-123, II-133 to II-134 (Health and Human Services Section, Special Provisions, §32, §58, and §59)) and are contingent upon the availability of funds. The proposed amendments will allow HHSC to implement increases in trauma add-ons and to implement a new standard dollar amount (SDA) add-on for certain safety-net hospitals. The amendments will also allow HHSC to increase reimbursement to rural hospitals for outpatient imaging services, general outpatient services, and non-emergent emergency room services.

The proposed payment rates were calculated in accordance with proposed amended rate setting methodologies at 1 TAC:

§355.8061, which addresses payment for outpatient hospital services; and

§355.8052, which addresses payment for inpatient hospital services.

The proposed amendments were published in the June 26, 2015, issue of the *Texas Register*.

### Proposed Outpatient Hospital Rates.

- Imaging services in rural hospitals - Outpatient rural hospital imaging services will be reimbursed according to the outpatient hospital imaging service fee schedule with an add-on that is a stair-stepped add-on to the Medicaid fee schedule for non-rural hospitals. Fees will not exceed 100 percent of Medicare fees.

- Rural hospitals - General outpatient covered charges are proposed to be increased to 100 percent for all rural hospitals. Reimbursement will not exceed 100 percent of cost.

- Non-emergent emergency department services in rural hospitals - Covered services provided in the hospital emergency department that do not qualify as an emergency are proposed to be increased from 60 percent to 65 percent of the covered charge amount. Reimbursement will not exceed 65 percent of cost.

#### **Proposed Inpatient Hospital Rates.**

- Urban hospitals - Currently, an SDA Trauma add-on is used for reimbursing urban hospitals that are designated as Trauma facilities. To be eligible for the trauma add-on, a hospital must be designated as a trauma hospital by the Texas Department of State Health Services. Proposed rates will increase the trauma add-on for eligible hospitals. The increase will be accomplished by increasing the percentage used to calculate the add-on.

- Urban and Children's hospitals - A new SDA "Safety-Net" add-on is proposed for reimbursing hospitals using the existing statewide rate with an additional add-on payment. To be eligible for the add-on, a hospital must be an urban or children's hospital that provides inpatient services to a large percentage of Medicaid or uninsured patients. The hospital must meet the eligibility and qualification requirements described in §355.8065.

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on July 10, 2015. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). In addition, written comment may be sent by overnight mail or hand delivered to the Health and Human Services Commission, Rate Analysis Department, H-400, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-201502395  
Karen Ray  
General Counsel  
Texas Health and Human Services Commission  
Filed: June 22, 2015



#### **Notice of Public Hearing on Proposed Payment Rates**

Proposed Payment Rates for 24-Hour Residential Child Care and Supervised Independent Living; and the Sub-Acute Inpatient Treatment Program

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 15, 2015, at 2:00 p.m. to receive public comment on proposed payment rates for services provided under

the following programs operated by the Department of Family and Protective Services (DFPS): 24-Hour Residential Child Care and Supervised Independent Living Program (24RCC/SIL); and the Sub-Acute Inpatient Treatment Program. Proposed payment rates under foster care redesign for Single Source Continuum Contractors (SSCCs) providing services in the 24RCC/SIL program will be included as a topic for this public hearing.

The hearing will be held in compliance with Texas Administrative Code (TAC) Title 1, §355.7103(a)(2), which requires public notice and hearings on proposed 24RCC/SIL reimbursements. The public hearing will be held in the Public Hearing Room of the Brown Heatly Building, located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through Security at the front of the building facing Lamar Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes to increase payment rates for certain services for the 24RCC/SIL program, to propose a new payment rate for the Sub-Acute Inpatient Treatment Program and to propose rates for foster care redesign, including blended foster care rates and a rate ceiling for exceptional care. The proposed rates will be effective September 1, 2015, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

**Methodology and Justification.** The proposed payment rates were determined in accordance with the 2016-17 General Appropriations Act that included funds to support rate increases for certain services in the 24RCC/SIL program as well as funds to support a new Sub-Acute Inpatient Treatment Program. See General Appropriations Act, 84th Leg., R.S., art. II, at II-45 (DFPS, Rider 42). HHSC calculated the proposed payment rates in accordance with the proposed amended rate setting methodology for 24RCC/SIL codified at Title 1, §355.7103 of the TAC and the proposed new rate setting methodology for the Sub-Acute Inpatient Treatment Program to be codified at Title 1, §355.7107 of the TAC. The proposed amendment and new section were published in the June 26, 2015, issue of the *Texas Register*.

**Briefing Package.** A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on July 3, 2015. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Health and Human Services Commission, Rate Analysis Department, H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [kyle.baxter@hhsc.state.tx.us](mailto:kyle.baxter@hhsc.state.tx.us). In addition, written comment may be sent by overnight mail or hand delivered to the Health and Human Services Commission, Rate Analysis Department, H-400, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-201502404  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: June 23, 2015



#### **Public Notice**

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to extend the Texas Healthcare Transformation Quality Improvement Program under section 1115 of the Social Security Act. CMS has approved this waiver through September 30, 2016. The proposed effective date for the extension is October 1, 2016 for a five-year period ending September 30, 2021.

The State of Texas submitted a section 1115 Demonstration proposal to CMS in July 2011 to expand risk-based managed care statewide and to operate funding pools to reimburse providers for uncompensated care costs and to provide incentive payments for implementation and operation of delivery system reforms. CMS approved the waiver in December 2011. Through the 1115 waiver, the State has expanded its use of Medicaid managed care to achieve program savings, while also preserving locally funded supplemental payments to hospitals. The goals and objectives of the demonstration are to:

- expand risk-based managed care statewide,
- support the development and maintenance of a coordinated care delivery system,
- improve outcomes while containing cost growth,
- protect and leverage financing to improve and prepare the healthcare infrastructure to serve a newly insured population, and
- transition to quality-based payment systems across managed care and hospitals.

There are three major components within the 1115 waiver:

- HHSC has expanded the delivery of Medicaid managed care services statewide through the STAR, STAR+PLUS and Children's Medicaid Dental Services programs.
- The Delivery System Reform Incentive Payment (DSRIP) program has established 20 Regional Healthcare Partnerships across the state, overseeing multiple local projects focused on integrated physical and behavioral healthcare, patient-centered medical homes, chronic care management and patient care navigation.
- The Uncompensated Care (UC) pool helps offset uncompensated costs undertaken by hospitals and certain other providers serving Medicaid and other low-income populations.

HHSC is requesting a five-year extension to build on the work accomplished thus far, continue to strengthen programs operating under the waiver, and further demonstrate program outcomes. With the extension, HHSC is requesting that CMS continue the Demonstration Year 5 DSRIP funding level (\$3.1 billion annually) and increase the UC pool to address need in Texas within current budget neutrality. HHSC is not seeking any changes to managed care program operations.

The public is invited to submit comments on the waiver extension application for a period of 30 days beginning Monday, July 6, 2015. The public comment period will end on Wednesday, August 5, 2015. HHSC will host a series of meetings to provide information about the extension application as well as an opportunity for the public to provide comments. Locations, dates and times are as follows:

- July 13, 2015 - 10AM - 12PM CDT - Texas Department of Transportation, 7600 Washington, Houston, Texas 77007
- July 15, 2015 - 1PM - 3PM CDT - Edinburg Conference Center at Renaissance, 118 Paseo Del Prado, Edinburg, Texas 78539
- July 16, 2015 - 10AM - 12PM CDT - Tyler Junior College, West Campus, 1530 S SW Loop 323, Room 104, Tyler, Texas 75701

- July 16, 2015 - 2PM - 4PM CDT - Texas Health and Human Services Commission, Brown-Healty Bldg., Public Hearing Room 1410, 4900 N. Lamar Blvd., Austin, Texas 78751 (Webcast available at this meeting.)

- July 20, 2015 - 9AM - 11AM CDT - Omni Colonnade, 9821 Colonnade Blvd., San Antonio, Texas 78230

- July 21, 2015 - 10AM - 12PM CDT - Old Red Museum of Dallas County History and Culture, 100 S Houston St, Dallas, Texas 75202

- July 22, 2015 - 1:30PM - 3:30PM MDT - El Paso First Health Plans Inc., 1145 Westmoreland Drive, El Paso, Texas 79925

- July 24, 2015 - 1PM - 3PM CDT - Region 16-Educational Services Center, Lecture Hall, 5800 Bell Street, Amarillo, Texas 79109

HHSC will also host a webinar on July 23, 2015 from 9:30AM - 11:30AM. To join the online meeting please visit [www.hhsc.state.tx.us/1115-waiver.shtml](http://www.hhsc.state.tx.us/1115-waiver.shtml) and follow the instructions provided.

This is the abbreviated public notice set forth in 42 CFR §431.408(a)(2)(ii). The full public notice and the complete extension application will be available online by July 3, 2015 at [www.hhsc.state.tx.us/1115-waiver.shtml](http://www.hhsc.state.tx.us/1115-waiver.shtml). The application includes a detailed description of the waiver programs, including current categories of eligibility for services under managed care; enrollment projections and financial information; a summary of the evaluation currently being conducted for the waiver programs; summaries of reports of quality of and access to care under the waiver; and additional information as required by CMS.

To obtain copies of the extension application, submit comments or receive other information about the extension, interested parties may contact Micah Erwin by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 424-6549, fax (512) 730-7472, or by email at [TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us).

TRD-201502420

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 24, 2015



#### Public Notice - State Plan Amendment Number 15-019

The Texas Health and Human Services Commission announces its intent to submit transmittal number 15-019 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to clarify and simplify state plan requirements related to the Early and Periodic Screening, Diagnosis, and Treatment Eyeglass Program and the Medicaid Vision Care Program for individuals age 21 and over. The proposed amendment is effective December 6, 2015.

The proposed amendment is estimated to have no fiscal impact. The amendment does not change or modify allowable coverage or benefits.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at [jr.top@hhsc.state.tx.us](mailto:jr.top@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.



TRD-201502394  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: June 22, 2015

◆   ◆   ◆

## Texas Department of Housing and Community Affairs

### Public Notice

#### Notice of Public Hearings for the Community Services Block Grant (CSBG) State Plan and Application for Fiscal Years 2016 - 2017

#### Notice of Public Hearings for the Low Income Home Energy Assistance Program (LIHEAP) State Plan and Application for Fiscal Year 2016

In accordance with the U.S. Department of Health and Human Services' requirement for the CSBG and LIHEAP and Texas Government Code, Chapter 2105, Subchapter B, the Texas Department of Housing and Community Affairs (TDHCA) is conducting public hearings. The purpose of the hearings is to solicit comments on the draft Texas FFY 2016 - 2017 CSBG State Plan and Application (CSBG Draft Plan) and the draft LIHEAP State Plan and Application (LIHEAP Draft Plan).

The CSBG Draft Plan describes the proposed use and distribution of CSBG funds for Federal Fiscal Years 2016 and 2017. As federal statute requires, not less than ninety percent of the CSBG funds will be distributed to the State's CSBG eligible entities and not more than five percent will be used for state administration, including support for planning, for monitoring, and for the provision of training and technical assistance. The remaining five percent will be utilized to fund state discretionary projects/initiatives and for disaster assistance recovery.

The LIHEAP Draft Plan describes the proposed use and distribution of LIHEAP funds for Federal Fiscal Year 2016. LIHEAP provides funding for the Comprehensive Energy Assistance Program (CEAP) and the Weatherization Assistance Program (WAP).

The CSBG Draft Plan and the LIHEAP Draft Plan were presented and approved by the TDHCA Board of Directors on June 16, 2015. As part of the public information, consultation, and public hearing requirements for CSBG and LIHEAP, the Community Affairs Division of TDHCA has posted the proposed plans on the TDHCA website:

The CSBG Draft Plan is available at <http://www.tdhca.state.tx.us/community-affairs/csbg/index.htm>.

The LIHEAP Draft Plan is available at <http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm>.

The documents may be obtained by contacting the Texas Department of Housing and Community Affairs at P.O. Box 13941, Austin, Texas 78711-3941 or by phone at (512) 475-3905.

Public hearings for the CSBG Draft Plan and the LIHEAP Draft Plan will be held as follows:

Tuesday, July 7, 2015, 1:30 p.m. in Conference Room 116, TDHCA headquarters located at 221 East 11th Street, Austin, Texas 78701

Wednesday, July 8, 2015, 6:00 p.m. at the Willie Velasquez Center, 1302 N. Zarzamora, San Antonio, Texas 78207

Thursday, July 9, 2015, 1:30 p.m. at the Gulf Coast Community Services Association, 9320 Kirby Drive, Houston, Texas 77054

Monday, July 13, 2015, 6:00 p.m. at the Southside Community Center, 959 E. Rosedale, Fort Worth, Texas 76104

At the hearings, the CSBG Draft Plan will be presented for public comment, followed immediately by presentation of the LIHEAP Draft Plan for public comment. Persons may provide public comment on the CSBG Draft Plan and the LIHEAP Draft Plan either through oral testimony or written testimony. A representative from TDHCA will be present at the hearings to explain the planning process and receive comments from interested citizens and affected groups regarding the draft plans.

The public comment period to accept comments regarding the draft plans will be open from June 16, 2015, through July 14, 2015, at 12:00 p.m. Written comments concerning the draft plans may also be submitted to the Texas Department of Housing and Community Affairs, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us), or by fax to (512) 475-3935. Comments are due no later than 12:00 p.m., Tuesday, July 14, 2015. Any questions regarding the public comment process may be directed to Rita D. Gonzales-Garza, CSBG Program Administrator, in the Community Affairs Division at (512) 475-3905 or [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us).

Individuals who require auxiliary aids, services, or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, (512) 475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Aviso de Audiencia Pública sobre la Solicitud y el Plan Estatal para los Años Fiscal Federal 2016-2017 del Community Services Block Grant (CSBG)

Aviso de Audiencia Pública sobre la Solicitud y el Plan Estatal para el Año Fiscal Federal 2016 del Low Income Home Energy Assistance Program (LIHEAP)

Conforme con los requisitos del Departamento de Salud y Servicios Humanos de los Estados Unidos para los programas federal del Community Services Block Grant (CSBG, por sus siglas en inglés) y Low Income Home Energy Assistance Program (LIHEAP, por sus siglas en inglés) y el Capítulo 2105, Subcapítulo B del Código del Gobierno de Texas, el Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA, por sus siglas en inglés) conducirá varias audiencias públicas. El propósito principal de estas audiencias es para solicitar comentario público sobre el anteproyecto de la Solicitud y el Plan Estatal para los Años Fiscal Federal (FFY, por sus siglas en inglés) 2016 - 2017 del CSBG (Anteproyecto del Plan Estatal CSBG) y del anteproyecto de la Solicitud y el Plan Estatal LIHEAP para el FFY 2016 (Anteproyecto del Plan Estatal LIHEAP).

El Anteproyecto del Plan Estatal CSBG detalla el propuesto uso y distribución de los fondos federales CSBG para los años fiscales federales (FFY) 2016 - 2017. Según requiere la ley federal, no más del 90% de los fondos serán distribuidos a las agencias elegibles que reciben fondos de CSBG y no más del 5% se utilizará para la administración estatal del programa, incluyendo actividades para la planificación, seguimiento del progreso o cumplimiento y para proveer entrenamiento y asistencia técnica. El restante 5% se utilizará para proyectos e iniciativas especiales y de demostración de CSBG y para proveer asistencia en casos de desastres naturales o artificiales.

El Anteproyecto del Plan Estatal LIHEAP detalla el propuesto uso y distribución de los fondos federales LIHEAP para el FFY 2016. El programa de LIHEAP provee fondos para los programas de Comprehensive Energy Assistance (CEAP, por sus siglas en ingles) y el Weatherization Assistance Program (WAP, por sus siglas en ingles).

Los Anteproyectos de los Planes Estatales CSBG y LIHEAP fueron presentados a la junta directiva del TDHCA el 16 de junio del 2015. Como seguimiento a la provision de información pública, asesoramiento y los requisitos de las audiencias públicas para los programas CSBG y LIHEAP, la División de Asuntos Comunitarios del TDHCA publicará los anteproyectos de los planes estatales federales en el sitio web del TDHCA:

El Anteproyecto del Plan Estatal CSBG está disponible en <http://www.tdhca.state.tx.us/community-affairs/csbgi/index.htm>.

El Anteproyecto del Plan Estatal LIHEAP está disponible en <http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm>.

El documento se puede obtener comunicandose al TDHCA, P.O. Box 13941, Austin, Texas 78711-3941 o por teléfono al (512) 475-3905.

Las audiencias públicas sobre los Anteproyectos de los Planes Estatales CSBG y LIHEAP se han programado de la manera siguiente:

Martes, 7 de julio del 2015, 1:30 p.m.

Texas Department of Housing and Community Affairs

221 East 11th Street (Calle 11 Este) Sala 116

Austin, Texas 78701

Miércoles, 8 de julio del 2015, 6:00 p.m.

Willie Velasquez Center

1302 N. Zarzamora Street

San Antonio, Texas 78207

Jueves, 9 de julio del 2015, 1:30 p.m.

Gulf Coast Community Services Association

9320 Kirby Drive

Houston, Texas 77054

Lunes, 13 de julio del 2015, 6:00 p.m.

Southside Community Center

959 East Rosedale Street

Fort Worth, Texas 76104

Durante las audiencias, el Anteproyecto del Plan Estatal CSBG será presentado para solicitar comentario público, seguido inmediatamente por el Anteproyecto del Plan Estatal LIHEAP. Personas interesadas pueden proveer comentario public sobre el Anteproyecto del Plan Estatal CSBG y/o LIHEAP en forma escrita o testimonio oral. Un representante del TDHCA estará presente para explicar el proceso de planificación y recibir comentario público de personas y grupos interesadas respecto a los anteproyectos de los planes estatales.

El período de comentario público para aceptar comentarios sobre los anteproyectos de los planes estatales comienza el 3 de junio del 2015 hasta el 14 de julio del 2015 a las 12:00 de la noche. Comentarios escritos sobre los anteproyectos de los planes estatales tambien pueden

ser presentados por correo al Texas Department of Housing and Community Affairs, Atención: Rita Garza, P.O. Box 13941, Austin, Texas 78711-3941 o pueden enviarse a través de correo electrónico a [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us) o por fax al (512) 475-3935. Comentario público no será aceptado luego de las 12 de la noche el martes, 14 de julio del 2015. Si tiene preguntas sobre este proceso, comuníquese con Rita D. Gonzales-Garza, Administrador del programa CSBG al (512) 475-1435 o envíe un correo electrónico a: [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us).

Personas que necesiten equipos o servicios auxiliares para esta junta deben comunicarse con Gina Esteves, empleada responsable de la ley sobre la Ley de Estadounidenses con Discapacidades (ADA, por sus siglas en ingles), al (512) 475-3943 o al Relay Texas al (800) 662-4954 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a [elena.peinado@tdhca.state.tx.us](mailto:elena.peinado@tdhca.state.tx.us) por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201502328

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 18, 2015

◆ ◆ ◆

## Texas Lottery Commission

Instant Game Number 1691 "\$1 Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1691 is "\$1 SET FOR LIFE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1691 shall be \$1.00 per Ticket.

1.2 Definitions in Instant Game No. 1691.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, MONEY BAG SYMBOL, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100, \$250, \$1,000 and \$500 WK SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1691 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
<b>MONEY BAG SYMBOL</b>	<b>WIN</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$250	TWO FTY
\$1,000	ONE THOU
<b>\$500 WK SYMBOL</b>	<b>FOR 20 YRS</b>

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, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00, \$100 or \$250.

H. High-Tier Prize - \$1,000 or top prize of \$500/wk (\$500 per week for 20 years or Cash Value Option). The cash value for the Cash Value Option prize amount will be determined at the time of claim and based on the cost of purchasing the annuity.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1691), 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: 1691-0000001-001.

K. Pack - A Pack of "\$1 SET FOR LIFE" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 will be on the last page with backs exposed. Tickets 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

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 "\$1 SET FOR LIFE" Instant Game No. 1691 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 "\$1 SET FOR LIFE" Instant Game is determined once the latex on the Ticket is scratched off to expose 12 (twelve) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MONEY BAG"

Play Symbol, the player wins the PRIZE for that symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) 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 12 (twelve) 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 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 12 (twelve) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to five (5) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "MONEY BAG" (auto win) Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$1 SET FOR LIFE" Instant Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 or \$250, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$100 or \$250 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 "\$1 SET FOR LIFE" Instant Game prize of \$1,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying

a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$1 SET FOR LIFE" top level prize of \$500 per week for 20 years, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "\$1 SET FOR LIFE" Instant Game prize of \$500 per week for 20 years, the claimant must choose one of five (5) payment options for receiving his prize:

1. Cash Value Option via direct deposit transfer to the claimant/winner's account. For the top prize, a cash value option may be selected at the time of claiming the prize. The value of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

2. Weekly via direct deposit transfer to the claimant/winner's account. With this plan, a payment of \$500.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

3. Monthly via direct deposit transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment of \$2,326.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$2,166.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

4. Quarterly via direct deposit transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$6,500.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

5. Annually via direct deposit transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$26,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

E. As an alternative method of claiming a "\$1 SET FOR LIFE" Instant Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100, \$250 or \$1,000, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$1 SET FOR LIFE" 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 "\$1 SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall

be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 32,160,000 Tickets in the Instant Game No. 1691. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1691 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	3,859,200	8.33
\$2	2,144,000	15.00
\$5	428,800	75.00
\$10	107,200	300.00
\$20	107,200	300.00
\$40	84,152	382.17
\$100	6,700	4,800.00
\$250	536	60,000.00
\$1,000	47	684,255.32
\$500/WK/20 YRS	4	8,040,000.00

\* 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 4.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1691 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. 1691, 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-201502410

Bob Biard

General Counsel

Texas Lottery Commission

Filed: June 23, 2015



Instant Game Number 1692 "\$2 Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1692 is "\$2 SET FOR LIFE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1692 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1692.

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, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, MONEY BAG SYMBOL, 2X SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$5,000 and \$1,000 WK SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1692 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
<b>MONEY BAG SYMBOL</b>	<b>WIN</b>
<b>2X SYMBOL</b>	<b>DOUBLE</b>
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$5,000	FIV THOU
<b>\$1,000 WK SYMBOL</b>	<b>FOR 20 YRS</b>

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 \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - \$5,000 or top prize of \$1,000/wk (\$1,000 per week for 20 years or Cash Value Option). The cash value for the Cash Value Option prize amount will be determined at the time of claim and based on the cost of purchasing the annuity.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1692), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1692-0000001-001.

K. Pack - A Pack of "\$2 SET FOR LIFE" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$2 SET FOR LIFE" Instant Game No. 1692 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 "\$2 SET FOR LIFE" Instant Game is determined once the latex on the Ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 23 (twenty-three) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

### 2.2 Programmed Game Parameters.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching



Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "MONEY BAG" (auto win) and "2X" (double) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "2X" (double) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$2 SET FOR LIFE" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, \$200 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$2 SET FOR LIFE" Instant Game prize of \$5,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$2 SET FOR LIFE" top level prize of \$1,000 per week for 20 years, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "\$2 SET FOR LIFE" Instant Game prize of \$1,000 per week for 20 years, the claimant must choose one of five (5) payment options for receiving his prize:

1. Cash Value Option via direct deposit transfer to the claimant/winner's account. For the top prize, a cash value option may be selected at the time of claiming the prize. The value of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

2. Weekly via direct deposit transfer to the claimant/winner's account. With this plan, a payment of \$1,000.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

3. Monthly via direct deposit transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment of \$4,413.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

4. Quarterly via direct deposit transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

5. Annually via direct deposit transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

E. As an alternative method of claiming a "\$2 SET FOR LIFE" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500 or \$5,000, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$2 SET FOR LIFE" 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 "\$2 SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 Tickets in the Instant Game No. 1692. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1692 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	3,600,000	8.33
\$4	1,920,000	15.63
\$5	720,000	41.67
\$10	240,000	125.00
\$20	240,000	125.00
\$50	120,000	250.00
\$100	34,500	869.57
\$200	2,500	12,000.00
\$500	250	120,000.00
\$5,000	20	1,500,000.00
\$1,000/WK/20 YRS	4	7,500,000.00

\* The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.36. 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. 1692 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. 1692, 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-201502411  
Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: June 23, 2015



Instant Game Number 1693 "\$5 Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1693 is "\$5 SET FOR LIFE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1693 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1693.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, 5X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$1,000, \$10,000 and \$2,500 WK SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1693 – 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
<b>MONEY BAG SYMBOL</b>	<b>WIN</b>
<b>5X SYMBOL</b>	<b>WINX5</b>
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	TEN THOU
<b>\$2,500 WK SYMBOL</b>	<b>FOR 20 YRS</b>

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000 or top prize of \$2,500/wk (\$2,500 per week for 20 years or Cash Value Option). The cash value for the Cash Value Option prize amount will be determined at the time of claim and based on the cost of purchasing the annuity.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1693), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1693-0000001-001.

K. Pack - A Pack of "\$5 SET FOR LIFE" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$5 SET FOR LIFE" Instant Game No. 1693 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 "\$5 SET FOR LIFE" Instant Game is determined once the latex on the Ticket is scratched off to expose 46 (forty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 46 (forty-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 46 (forty-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 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

### 2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have six (6) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "MONEY BAG" (auto win) and "5X" (WINX5) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "5X" (WINX5) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e. 10 and \$10).

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$5 SET FOR LIFE" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$5 SET FOR LIFE" Instant Game prize of \$1,000 or \$10,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$5 SET FOR LIFE" top level prize of \$2,500 per week for 20 years, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue

Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "\$5 SET FOR LIFE" Instant Game prize of \$2,500 per week for 20 years, the claimant must choose one of five (5) payment options for receiving his prize:

1. Cash Value Option via direct deposit transfer to the claimant/winner's account. For the top prize, a cash value option may be selected at the time of claiming the prize. The value of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

2. Weekly via direct deposit transfer to the claimant/winner's account. With this plan, a payment of \$2,500.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

3. Monthly via direct deposit transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment of \$10,913.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$10,833.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

4. Quarterly via direct deposit transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$32,500.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

5. Annually via direct deposit transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$130,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

E. As an alternative method of claiming a "\$5 SET FOR LIFE" Instant Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 or \$10,000, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$5 SET FOR LIFE" 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 "\$5 SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 Tickets in the Instant Game No. 1693. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1693 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	1,800,000	8.33
\$10	1,600,000	9.38
\$20	300,000	50.00
\$50	200,000	75.00
\$100	30,750	487.80
\$500	1,500	10,000.00
\$1,000	135	111,111.11
\$10,000	15	1,000,000.00
\$2,500/WK/20 YRS	3	5,000,000.00

\* The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, 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. 1693 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. 1693, 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-201502412

Bob Biard

General Counsel

Texas Lottery Commission

Filed: June 23, 2015



Instant Game Number 1694 "\$10 Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1694 is "\$10 SET FOR LIFE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1694 shall be \$10.00 per Ticket.

1.2 Definitions in Instant Game No. 1694.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol- The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, MONEY BAG SYMBOL, 10X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$25,000 and \$5,000 WK SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 1694 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
<b>MONEY BAG SYMBOL</b>	<b>WIN</b>
<b>10X SYMBOL</b>	<b>WINX10</b>
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$25,000	25 THOU
<b>\$5,000 WK SYMBOL</b>	<b>FOR 20 YRS</b>

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 \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$25,000 or top prize of \$5,000/wk (\$5,000 per week for 20 years or Cash Value Option). The cash value for the Cash Value Option prize amount will be determined at the time of claim and based on the cost of purchasing the annuity.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1694), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 1694-0000001-001.

K. Pack - A Pack of "\$10 SET FOR LIFE" Instant Game Tickets contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

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 "\$10 SET FOR LIFE" Instant Game No. 1694 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 "\$10 SET FOR LIFE" Instant Game is determined once the latex on the Ticket is scratched off to expose 56 (fifty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "MONEY BAG" Play Symbol, the player wins the PRIZE for that symbol instantly. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 56 (fifty-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 56 (fifty-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 56 (fifty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 56 (fifty-six) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Players can win up to twenty-five (25) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching

Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have six (6) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "MONEY BAG" (auto win) and "10X" (WINX10) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol locations.

H. The "10X" (WINX10) Play Symbol will only appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning location will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 20 and \$20).

K. The \$5 and \$15 Prize Symbols will only appear on winning Tickets that use those Prize Symbols to create larger prizes.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$10 SET FOR LIFE" Instant Game prize of \$10.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$10 SET FOR LIFE" Instant Game prize of \$1,000 or \$25,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$10 SET FOR LIFE" top level prize of \$5,000 per week for 20 years, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set

by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "\$10 SET FOR LIFE" Instant Game prize of \$5,000 per week for 20 years, the claimant must choose one of five (5) payment options for receiving his prize:

1. Cash Value Option via direct deposit transfer to the claimant/winner's account. For the top prize, a cash value option may be selected at the time of claiming the prize. The value of the prize will be determined at the time of claim and based on the cost of purchasing the annuity.

2. Weekly via direct deposit transfer to the claimant/winner's account. With this plan, a payment of \$5,000.00 less Federal withholding will be made once a week for 20 years. After the initial payment, installment payments will be made every Wednesday.

3. Monthly via direct deposit transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, an initial payment of \$21,826.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of \$21,666.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

4. Quarterly via direct deposit transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of \$65,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

5. Annually via direct deposit transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of \$260,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

E. As an alternative method of claiming a "\$10 SET FOR LIFE" Instant Game prize of \$10.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000 or \$25,000, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.E of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$10 SET FOR LIFE" 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 "\$10 SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,200,000 Tickets in the Instant Game No. 1694. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1694 - 4.0

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in **</b>
\$10	1,224,000	8.33
\$20	1,020,000	10.00
\$25	204,000	50.00
\$30	204,000	50.00
\$50	204,000	50.00
\$100	36,890	276.50
\$200	3,400	3,000.00
\$500	1,530	6,666.67
\$1,000	170	60,000.00
\$25,000	10	1,020,000.00
\$5,000/WK/20 YRS	3	3,400,000.00

\* The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.52. 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. 1694 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. 1694, 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-201502413  
Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: June 23, 2015

◆ ◆ ◆  
**Texas Department of Public Safety**

**Notice to Applicants for Participation in the Department's Pilot Program for Driver Record Monitoring Services**

The Texas Department of Public Safety (the department) has completed its review of applications received in response to the department's Requests for Applications (RFA) for participation in the department's pilot program for Driver Record Monitoring Services (DRMS) posted on the Electronic State Business Daily and in the April 10, 2015, issue of the *Texas Register* (40 TexReg 2129).

The department has selected the following three entities as successful applicants with which the department will pursue contracts to provide DRMS:

- (1) iiX, 1716 Briarcrest, Suite 200, Bryan, Texas 77802;
- (2) SambaSafety, 8814 Horizon Boulevard NE, Suite 100, Albuquerque, New Mexico 87113; and
- (3) Explore, 2900 Lone Oak Parkway, Suite 140, Eagan, Minnesota 55121.

The pilot program is expected to begin Fall 2015 and will not exceed one year. If the pilot program is successful, the department may implement the pilot as a permanent program which will be expanded to other qualified applicants. In that event, the department will post and publish similar announcements.

TRD-201502389  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Filed: June 22, 2015

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Amendment to a Service Provider Certificate of Operating Authority**

On June 12, 2015, Mitel Cloud Services, Inc. f/k/a Mitel NetSolutions, Inc. filed an application with the Public Utility Commission of Texas (Commission) to amend service provider certificate of operating au-

thority (SPCOA) Number 60066. Applicant seeks approval of a name change.

Docket Style and Number: Application of Mitel Cloud Services, Inc. f/k/a Mitel NetSolutions, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 44835.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than July 2, 2015. 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 44835.

TRD-201502330  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 18, 2015

◆ ◆ ◆  
**Notice of Application for Amendment to a Service Provider Certificate of Operating Authority**

On June 15, 2015, Broadvox-CLEC, LLC and Onvoy, LLC filed an application with the Public Utility Commission of Texas (Commission) to amend service provider certificate of operating authority (SPCOA) Number 60837. Applicant seeks approval of a change in ownership/control.

Docket Style and Number: Application of Broadvox-CLEC, LLC and Onvoy, LLC for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 44840.

Application: Onvoy, LLC (Onvoy) and Broadvox-CLEC, LLC (Broadvox) request approval of the proposed transfer of direct ownership of Broadvox from the Broadvox Holding Company, LLC to Onvoy.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than July 6, 2015. 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 44840.

TRD-201502331  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 18, 2015

◆ ◆ ◆  
**Notice of Application for Sale, Transfer, or Merger**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 17, 2015, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Ann. §39.154 and §38.158 (West 2008 & Supp. 2014) (PURA).

Docket Style and Number: Application of Logan's Gap Wind Holdings LLC Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 44847.

The Application: Logan's Gap Wind Holdings LLC (Logan's Gap) is developing a nameplate 200 MW wind generation project located in Comanche County, Texas, and interconnected into the Electric Reliability Council of Texas (ERCOT) (Project). Pattern Energy Group Inc.

(Pattern Energy) currently indirectly owns 100% of the equity interests in Logan's Gap. Pattern Energy is 24% owned by Pattern Energy Group LP (Pattern Development) and 76% publicly held. Pattern Energy indirectly owns interests in four wind generation assets in ERCOT. Interests in Pattern Development are indirectly held by funds sponsored or affiliated with Riverstone Holdings LLC (Riverstone) and funds sponsored or affiliated with Riverstone also hold interests in Topaz Power Group LLC, which owns three natural-gas fired generation projects in ERCOT. Logan's Gap desires to issue certain passive equity interests in Logan's Gap to BAL Investment & Advisory, Inc., Citicorp North America, Inc., and BTMU Capital Leasing & Finance, Inc. (collectively, Investors) (the sale hereinafter referred to as the Transaction). Investors also own equity interests in generation facilities in ERCOT and capable of delivery into ERCOT. After the Transaction, the combined direct and indirect generation ownership in or capable of tie into ERCOT owned by Logan's Gap, including its affiliates, and accounting for Investors and their affiliates will equal 1,256.76 MW, which exceeds the 1% of the generation ownership in ERCOT but does not exceed the cap in PURA §39.154.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 44847.

TRD-201502332  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 18, 2015

◆ ◆ ◆  
**Notice of Application to Amend Water Certificate of Convenience and Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Bosque County, Texas.

Docket Style and Number: Application of Childress Creek Water Supply Corporation to Amend its Water Certificate of Convenience and Necessity in Bosque County by Decertifying the VM Neighbors Water Group Tracts; Docket Number 44843.

The Application: On June 16, 2015, Childress Creek Water Supply Corporation (Childress Creek) filed with the Public Utility Commission of Texas (Commission) an application to decertify a portion of water CCN No. 11000 in Bosque County. The area to be decertified is currently not receiving, nor has it ever received, water or wastewater services from Childress Creek. VM Neighbors Water Group currently provides services to the eight customers located within the area to be decertified.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44843.

TRD-201502406  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 23, 2015

◆ ◆ ◆  
**Notice of Application to Amend Water Certificate of Convenience and Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Travis County, Texas.

Docket Style and Number: Application of Austin Water Utility to Amend its Certificate of Convenience and Necessity and to Transfer a Portion of Aqua Utilities, Inc. dba Aqua Texas' Water Certificate of Convenience and Necessity in Travis County, Docket Number 44850.

The Application: Austin Water Utility (AWU) filed an application to amend its water CCN No. 11322 in Travis County, Texas. AWU seeks to amend its CCN to transfer a 10.892 acre tract of land currently located in the certificated service area of Aqua Utilities, Inc. dba Aqua Texas' CCN No. 11157, to AWU. There are zero current customers.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44850.

TRD-201502405  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 23, 2015

◆ ◆ ◆  
**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.html](http://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html).

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-201502418  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: June 24, 2015

◆   ◆   ◆

## Texas Veterans Commission

### Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program

**Filing Authority.** The availability of grant funds is authorized by Texas Government Code, §434.017.

**Eligible Applicants.** The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

**Description.** The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; legal services, excluding criminal defense; family, child, and supportive services; employment, training/job placement assistance; and development of professional services networks.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; outstanding grant applications; and the service category of financial assistance. The priorities for this grant series, 16-A, will be outlined in the RFA.

**Grant Funding Period.** Grants awarded will begin on January 1, 2016, and end on December 31, 2016. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

**Grant Amounts.** For this solicitation, the minimum grant award will be \$5,000. The maximum grant award for regional projects will be \$300,000. The maximum grant award for statewide projects will be \$500,000. Regional and statewide geographic service areas for this grant series will be defined in the RFA.

**Number of Grants to be Awarded and Total Available.** The anticipated total amount of grant funding available for this award is \$4,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

**Selection Criteria.** TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There

is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

**Requesting the Materials Needed to Complete an Application.** All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Monday, July 6, 2015. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

**Further Information.** In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to [grants@tvc.texas.gov](mailto:grants@tvc.texas.gov). All questions and the written answers will be posted on the TVC website as per the RFA.

**Deadline for Receipt of an Application.** Applications must be received by TVC by 5:00 p.m. on Monday, August 17, 2015, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201502423

Charles Catoe

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: June 24, 2015

◆   ◆   ◆

## Workforce Solutions Deep East Texas

### Request for Proposals for Operations and Management of Child Care Services

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas (WSDet) is comprised of volunteer community representatives appointed by local elected officials to plan and oversee operation of the public workforce system in the 12-county Workforce Development Area (WDA) consisting of the following counties: Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Tyler Counties. Six offices provide a system for subsidized child care for eligible families and quality improvement activities for child care providers.

The Board is accepting Request for Proposals (RFP) for the operation and management of Child Care Services (CCS) in the WDA, beginning October 1, 2015. Questions concerning this procurement contract must be submitted via email to RFP contact Darla Johnson: [djohnson@detwork.org](mailto:djohnson@detwork.org) by July 3, 2015, no later than 5:00 p.m. A question and answer document will be posted on the Board's website at [www.detwork.org](http://www.detwork.org) on July 6, 2015, no later than 5:00 p.m.

Information necessary to prepare proposals is contained in the RFP and is available on the Board's website at [www.detwork.org](http://www.detwork.org). Prospective proposers should carefully read the RFP in its entirety before preparing a proposal. Proposals are to be submitted by: July 20, 2015, by 4:00 p.m. CDST.

TRD-201502407

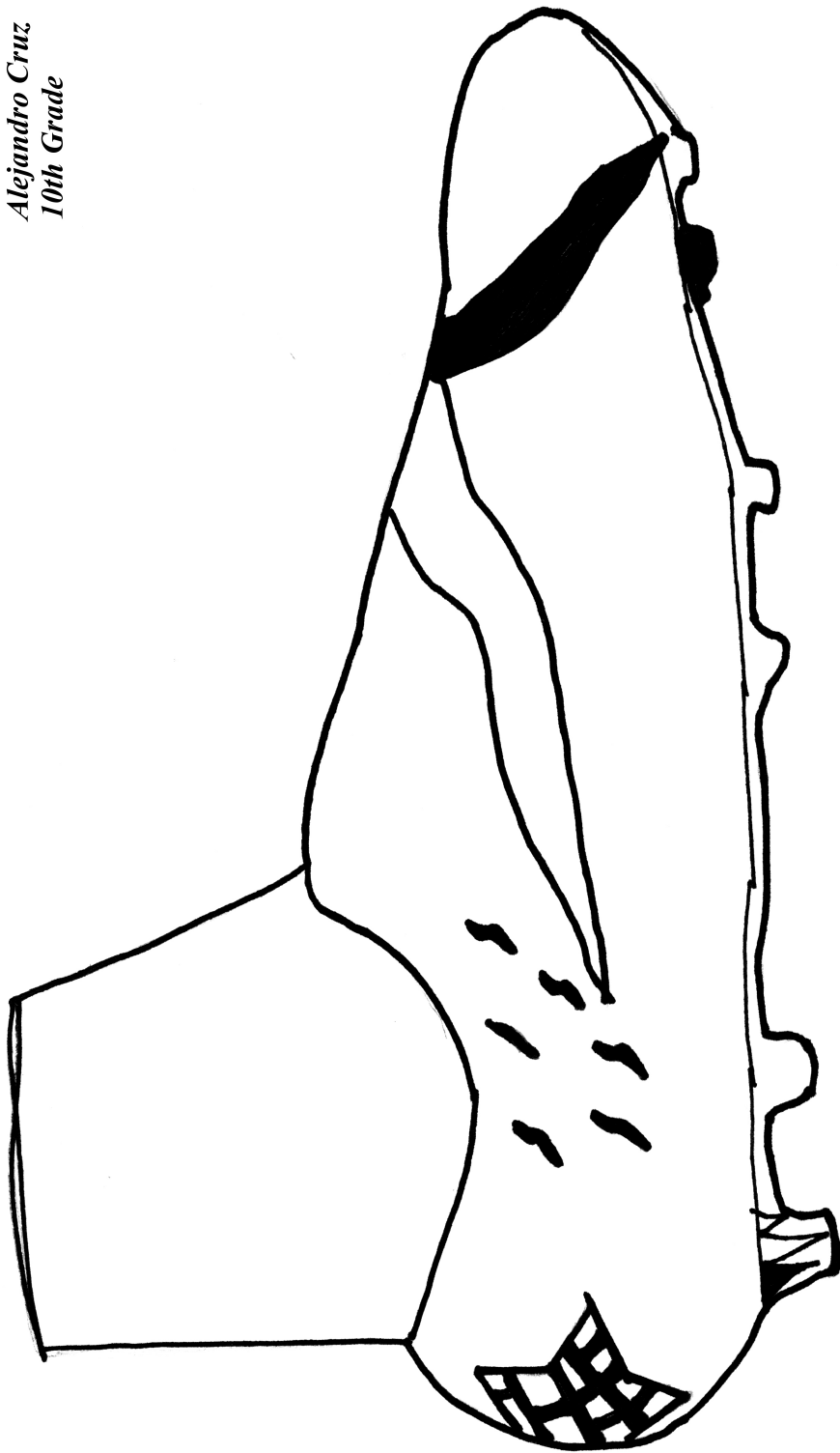
Darla Johnson

Operations and Procurement Manager

Workforce Solutions Deep East Texas

Filed: June 23, 2015

*Alejandro Cruz*  
*10th Grade*





January - December 2016 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. **They are not related to posting requirements for open meeting notices.** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

<b>Issue Number</b>	<b>Issue Date</b>	<b>Deadline for Rules by 12 Noon</b>	<b>Deadline for Other Documents by 12 Noon</b>
1	Friday, January 1	*Friday, December 18	*Friday, December 18
2	Friday, January 8	Monday, December 28	*Tuesday, December 29
3	Friday, January 15	Monday, January 4	Wednesday, January 6
	<i>Friday, January 15</i>	<i>Annual Index - 2015</i>	
4	Friday, January 22	Monday, January 11	Wednesday, January 13
5	Friday, January 29	*Friday, January 15	Wednesday, January 20
6	Friday, February 5	Monday, January 25	Wednesday, January 27
7	Friday, February 12	Monday, February 1	Wednesday, February 3
8	Friday, February 19	Monday, February 8	Wednesday, February 10
9	Friday, February 26	*Friday, February 12	Wednesday, February 17
10	Friday, March 4	Monday, February 22	Wednesday, February 24
11	Friday, March 11	Monday, February 29	Wednesday, March 2
12	Friday, March 18	Monday, March 7	Wednesday, March 9
13	Friday, March 25	Monday, March 14	Wednesday, March 16
14	Friday, April 1	Monday, March 21	Wednesday, March 23
	<i>Friday, April 1</i>	<i>First Quarterly Index</i>	
15	Friday, April 8	Monday, March 28	Wednesday, March 30
16	Friday, April 15	Monday, April 4	Wednesday, April 6
17	Friday, April 22	Monday, April 11	Wednesday, April 13
18	Friday, April 29	Monday, April 18	Wednesday, April 20
19	Friday, May 6	Monday, April 25	Wednesday, April 27
20	Friday, May 13	Monday, May 2	Wednesday, May 4
21	Friday, May 20	Monday, May 9	Wednesday, May 11
22	Friday, May 27	Monday, May 16	Wednesday, May 18
23	Friday, June 3	Monday, May 23	Wednesday, May 25
24	Friday, June 10	*Friday, May 27	Wednesday, June 1
25	Friday, June 17	Monday, June 6	Wednesday, June 8
26	Friday, June 24	Monday, June 13	Wednesday, June 15
27	Friday, July 1	Monday, June 20	Wednesday, June 22
	<i>Friday, July 1</i>	<i>Second Quarterly Index</i>	
28	Friday, July 8	Monday, June 27	Wednesday, June 29
29	Friday, July 15	*Friday, July 1	Wednesday, July 6
30	Friday, July 22	Monday, July 11	Wednesday, July 13
31	Friday, July 29	Monday, July 18	Wednesday, July 20
32	Friday, August 5	Monday, July 25	Wednesday, July 27
33	Friday, August 12	Monday, August 1	Wednesday, August 3
34	Friday, August 19	Monday, August 8	Wednesday, August 10
35	Friday, August 26	Monday, August 15	Wednesday, August 17

36	Friday, September 2	Monday, August 22	Wednesday, August 24
	<i>Friday, September 2</i>	<i>Third Quarterly Index</i>	
37	Friday, September 9	Monday, August 29	Wednesday, August 31
38	Friday, September 16	<i>*Friday, September 2</i>	Wednesday, September 7
39	Friday, September 23	Monday, September 12	Wednesday, September 14
40	Friday, September 30	Monday, September 19	Wednesday, September 21
41	Friday, October 7	Monday, September 26	Wednesday, September 28
42	Friday, October 14	Monday, October 3	Wednesday, October 5
43	Friday, October 21	Monday, October 10	Wednesday, October 12
44	Friday, October 28	Monday, October 17	Wednesday, October 19
45	Friday, November 4	Monday, October 24	Wednesday, October 26
46	Friday, November 11	Monday, October 31	Wednesday, November 2
47	Friday, November 18	Monday, November 7	Wednesday, November 9
48	Friday, November 25	Monday, November 14	Wednesday, November 16
49	Friday, December 2	<i>*Friday, November 18</i>	<i>*Friday, November 18</i>
50	Friday, December 9	Monday, November 28	Wednesday, November 30
51	Friday, December 16	Monday, December 5	Wednesday, December 7
52	Friday, December 23	Monday, December 12	Wednesday, December 14
53	Friday, December 30	Monday, December 19	<i>*Monday, December 19</i>

## 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.

**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.

**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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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, 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 *Texas Register* is available in an .html version as well as a .pdf 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 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

1 TAC §91.1.....950 (P)

## SALES AND CUSTOMER SUPPORT

**Sales** - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

**\*Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

**Customer Support** - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printcdsc](http://www.lexisnexis.com/printcdsc)



**LexisNexis**<sup>®</sup>

It's how you know<sup>™</sup>