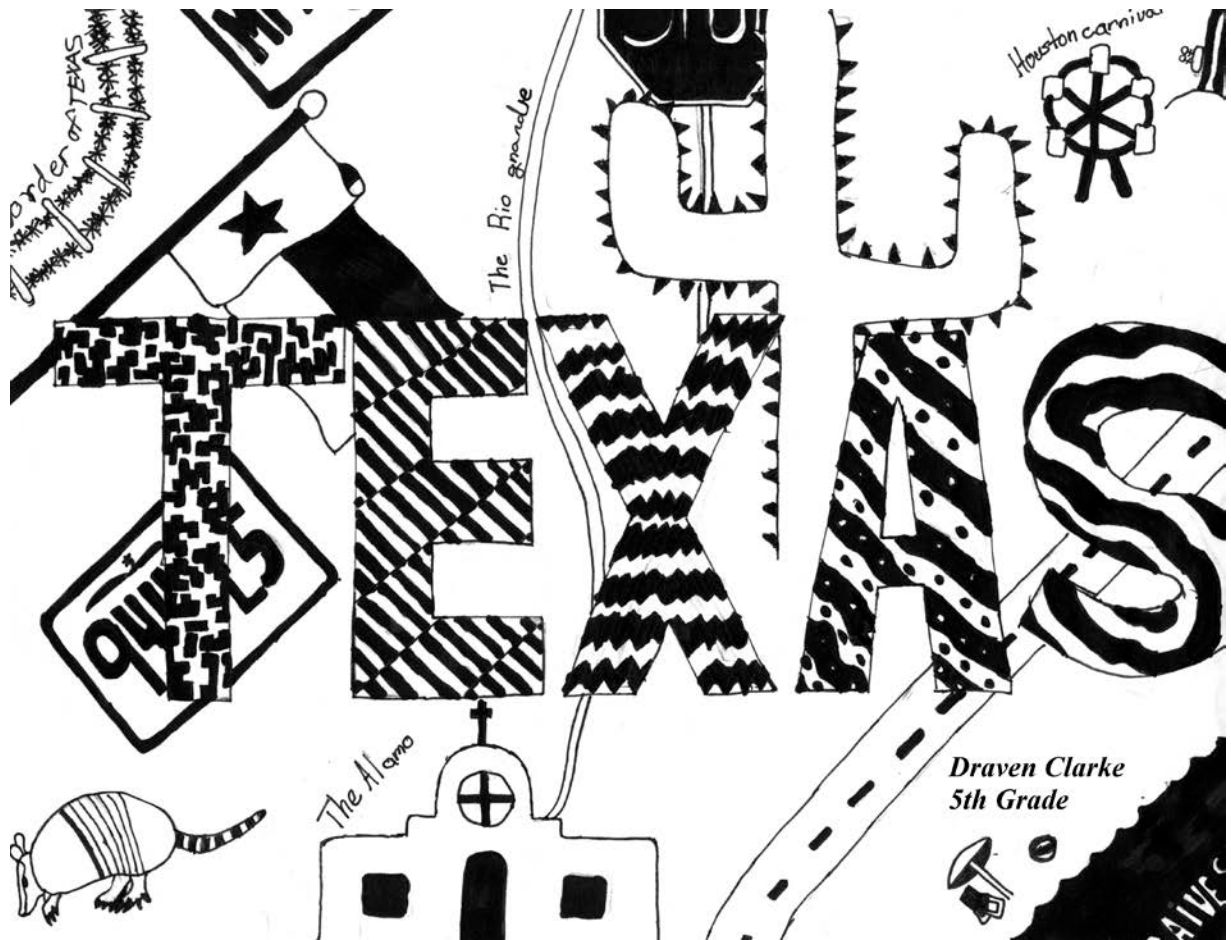


# TEXAS REGISTER

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July 31, 2015

Pages 4859 - 4956



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*.

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# THE GOVERNOR

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

## Appointments

### Appointments for July 2, 2015

Appointed as the Student Regent for the Texas A&M University System Board of Regents for a term to expire May 31, 2016, Alvaro G. "Gabe" Pereira of College Station (replacing Colton Buckley of Gatesville whose term expired).

Appointed as the Student Representative for the Texas Higher Education Coordinating Board for a term to expire May 31, 2016, Christina N. Delgado of Lubbock (replacing Gerald T. "Jerry" Korty of Fort Worth whose term expired).

Appointed as the Student Regent for the University of Houston System Board of Regents for a term to expire May 31, 2016, Garrett H. Hughey of Houston (replacing Asit Rajiv Shah of Richmond whose term expired).

Appointed as the Student Regent for Midwestern State University Board of Regents for a term to expire May 31, 2016, Megan Piehler of Plano (replacing Jesse Clyde Brown of Wichita Falls whose term expired).

Appointed as the Student Regent for the University of North Texas System Board of Regents for a term to expire May 31, 2016, Courtney N. Haning of Kaufman (replacing Christopher D. "Chris" Vera of Fort Worth whose term expired).

Appointed as the Student Regent for Stephen F. Austin State University Board of Regents for a term to expire May 31, 2016, Ryan Brown-Moreno of Plano (replacing Kelsey Brown of Flower Mound whose term expired).

Appointed as the Student Regent for Texas Southern University Board of Regents for a term to expire May 31, 2016, Dominique D. Calhoun of Houston (replacing Marshaun Williams of Houston whose term expired).

Appointed as the Student Regent for the Texas State University System Board of Regents for a term to expire May 31, 2016, Spencer A. Copeland of San Antonio (replacing Anna Alicia Sandoval of Alpine whose term expired).

Appointed as the Student Regent for the University of Texas System Board of Regents for a term to expire May 31, 2016, Justin A. Drake of Galveston (replacing David "Max" Richards of Fort Worth whose term expired).

Appointed as the Student Regent for the Texas Tech University System Board of Regents for a term to expire May 31, 2016, Victoria R. Messer of Lubbock (replacing Coby Nielson Ray of Lubbock whose term expired).

Appointed as the Student Regent for Texas Woman's University Board of Regents for a term to expire May 31, 2016, Neftali Gomez of Dallas (replacing Candace Henslee of Denton whose term expired).

### Appointments for July 8, 2015

Appointed as Judge of the 61st Judicial District, Harris County, for a term until the next General Election and until her successor shall be duly elected and qualified, Erin E. Lunceford of Bellaire (replacing Judge Alfred H. Bennett of Houston who resigned).

### Appointments for July 9, 2015

Appointed to the Texas Board of Nursing for a term to expire January 31, 2017, Doris Jackson of Pearland (replacing Mary Margaret LeBeck of Weatherford who resigned).

Appointed to the Texas Board of Nursing for a term to expire January 31, 2019, Laura A. Disque of Edinburg (replacing Marilyn J. Davis of Sugar Land who resigned).

Appointed to the Texas Board of Nursing for a term to expire January 31, 2021, Allison P. Edwards of Bellaire (replacing Josefina Lujan of El Paso whose term expired).

Appointed to the Texas Board of Nursing for a term to expire January 31, 2021, Diana R. Flores of Helotes (replacing Tamara "Tami" Cowen of Harlingen whose term expired).

Appointed to the Texas Board of Nursing for a term to expire January 31, 2021, Kathy L. Leader-Horn of Granbury (Ms. Leader-Horn is being reappointed).

Appointed to the Texas Board of Nursing for a term to expire January 31, 2021, David E. Saucedo, II of El Paso (replacing Neissa Brown Springmann of Austin whose term expired).

Appointed to the Texas Board of Nursing for a term to expire January 31, 2021, Francis D. Stokes of Port Aransas (replacing Sheri D. Crosby of Mesquite whose term expired).

### Appointments for July 16, 2015

Appointed to the Credit Union Commission for a term to expire February 15, 2021, Yusuf E. Farran of El Paso (replacing A. John Yogerst of San Antonio whose term expired).

Appointed to the Credit Union Commission for a term to expire February 15, 2021, Wesley "Steve" Gilman of Fulshear (replacing Gary Lynn Janacek of Belton whose term expired).

Appointed to the Credit Union Commission for a term to expire February 15, 2021, Julie "Beckie" Stockstill Cobb of Deer Park (replacing Robert P. Kyker of Richardson whose term expired).

Appointed to Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2021, Mary K. Alexander of Valley View (Ms. Alexander is being reappointed).

Appointed to Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2021, Jose J. "Joseph" Muñiz of Harlingen (Mr. Muñiz is being reappointed).

Appointed to Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2021, Tobie L. Wortham of Rockwall (replacing Gene I. Brooks of Austin whose term expired).

Appointed to the Upper Neches River Municipal Authority Board of Directors for a term to expire February 1, 2021, Jay S. Herrington, Sr. of Palestine (replacing Jesse D. Hickman of Palestine whose term expired).

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2017, Harry "Kyle" Sheets of Ovalo (replacing Howard R. Marcus of Austin who resigned).

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2021, Melbert C. "Bob" Hillert, Jr. of Dallas (Dr. Hillert is being reappointed).

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2021, Sherron D. Meeks of Midland (replacing Ann Quinn Todd of Houston whose term expired).

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2021, Shilpa Shamapant of Austin (replacing Pamela R. Akins of Austin whose term expired).

**Appointments for July 17, 2015**

Appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2021, James H. "Jim" Cheatham IV of Aledo (replacing Robert H. Price of Euless whose term expired).

Appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2021, William D. "Davey" Edwards of Alvord (replacing Nedra J. Foster of Silsbee whose term expired).

Appointed to the Texas Board of Professional Land Surveying for a term to expire January 31, 2021, Andrew W. "Drew" Paxton of Lubbock (replacing James A. Childress of San Saba whose term expired).

Appointed to the Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2021, Maricela "Marcie" Gonzalez Wilson of Lakeway (replacing Suzanne Monsour of Pearland whose term expired).

Greg Abbott, Governor

TRD-201502707



# 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-0032-KP**

**Requestor:**

Vincent J.M. Di Maio, Presiding Officer

Texas Forensic Science Commission

1700 North Congress Avenue, Suite 445

Austin, Texas 78701

Re: Responsibilities of the Texas Forensic Science Commission under article 39.14 of the Code of Criminal Procedure (RQ-0032-KP)

**Briefs requested by August 17, 2015**

**RQ-0033-KP**

**Requestor:**

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Authority of a commissioners court, after adoption of the budget, to adopt a standing budget policy that automatically reduces the salary line item of an employee of an elected official upon the employee's departure from the position (RQ-0033-KP)

**Briefs requested by August 17, 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-201502692

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: July 17, 2015



Requests for Opinions

**RQ-0034-KP**

**Requestor:**

Raymund A. Paredes, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Eligibility for forgiveness of a B-On-Time Loan (RQ-0034-KP)

**Briefs requested by August 17, 2015**

**RQ-0035-KP**

**Requestor:**

The Honorable Susan Hawk

Dallas County District Attorney

411 Elm Street, 5th Floor

Dallas, Texas 75202

Re: Authority of a district attorney to use the hot check fund to pay for expenses related to the improper towing, impoundment, and sale of a federally-seized vehicle (RQ-0035-KP)

**Briefs requested by August 17, 2015**

**RQ-0036-KP**

**Requestor:**

The Honorable Val J. Varley

Red River County and District Attorney

400 North Walnut Street

Clarksville, Texas 75426-4012

Re: Whether the common-law doctrine of incompatibility prohibits simultaneous service as a county sheriff and a member of the board of trustees of a school district (RQ-0036-KP)

**Briefs requested by August 19, 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-201502731

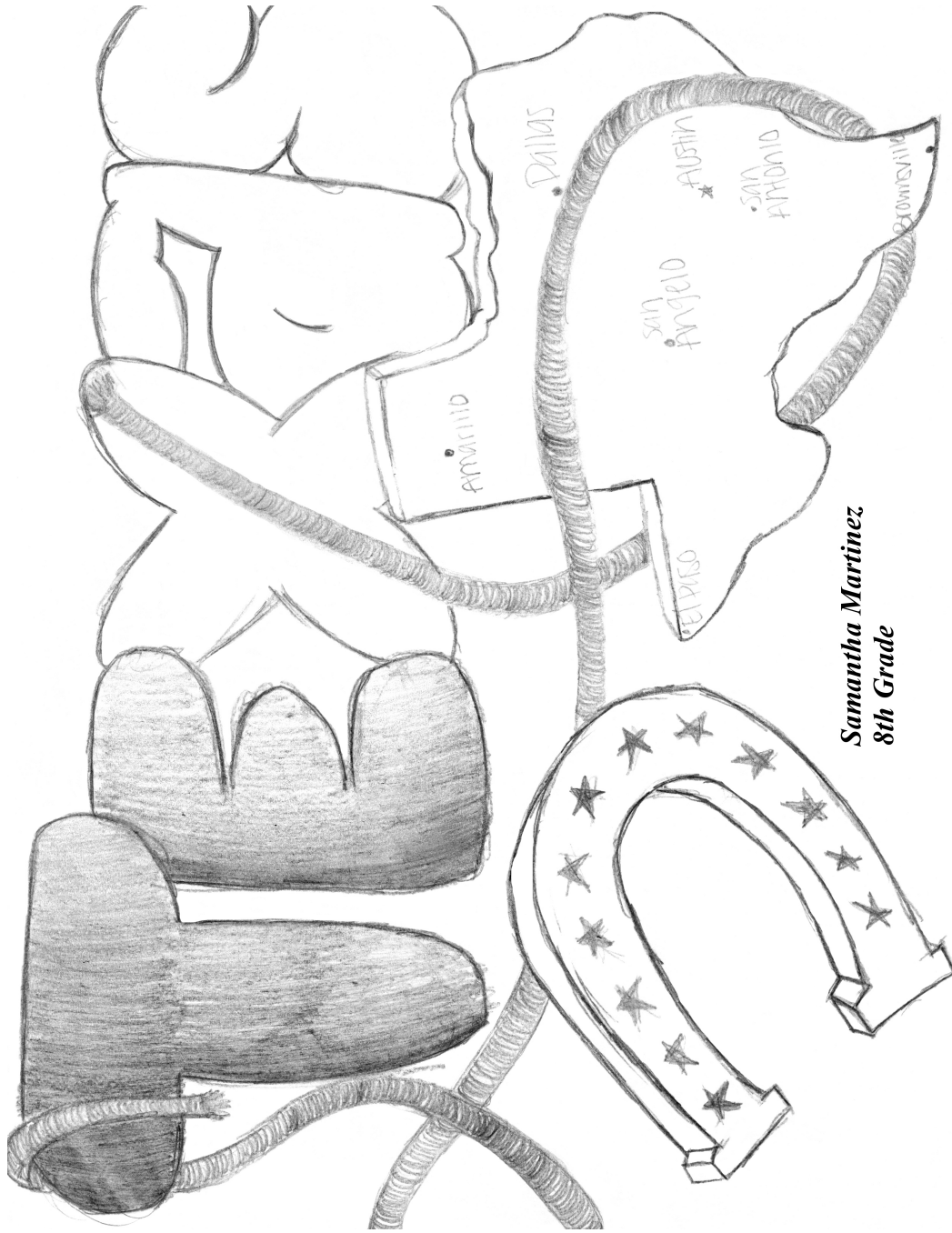
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: July 21, 2015





*Samantha Martinez*  
*8th Grade*

# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Request

The Texas Ethics Commission has been asked to consider the legislative advertising disclosure requirements for legislative advertising that is broadcast pursuant to a contract personally signed by an individual on behalf of a corporation. **(AOR-600)**

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201502732  
Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission  
Filed: July 21, 2015



## Advisory Opinion Request

The Texas Ethics Commission has been asked to consider whether a public servant commits an offense if she accepts a benefit from a person who the public servant has no reason to believe is subject to regulation, inspection, or investigation by the public servant or her agency and who informs the public servant that the person is not subject to the regulation, inspection or investigation of the public servant or her agency. **(AOR-601)**

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15,

Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201502733  
Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission  
Filed: July 21, 2015



## Advisory Opinion Request - Staff Proposal

Whether a person appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee is an "appointed officer" for purposes of Chapter 572 of the Government Code. **(SP-12)**

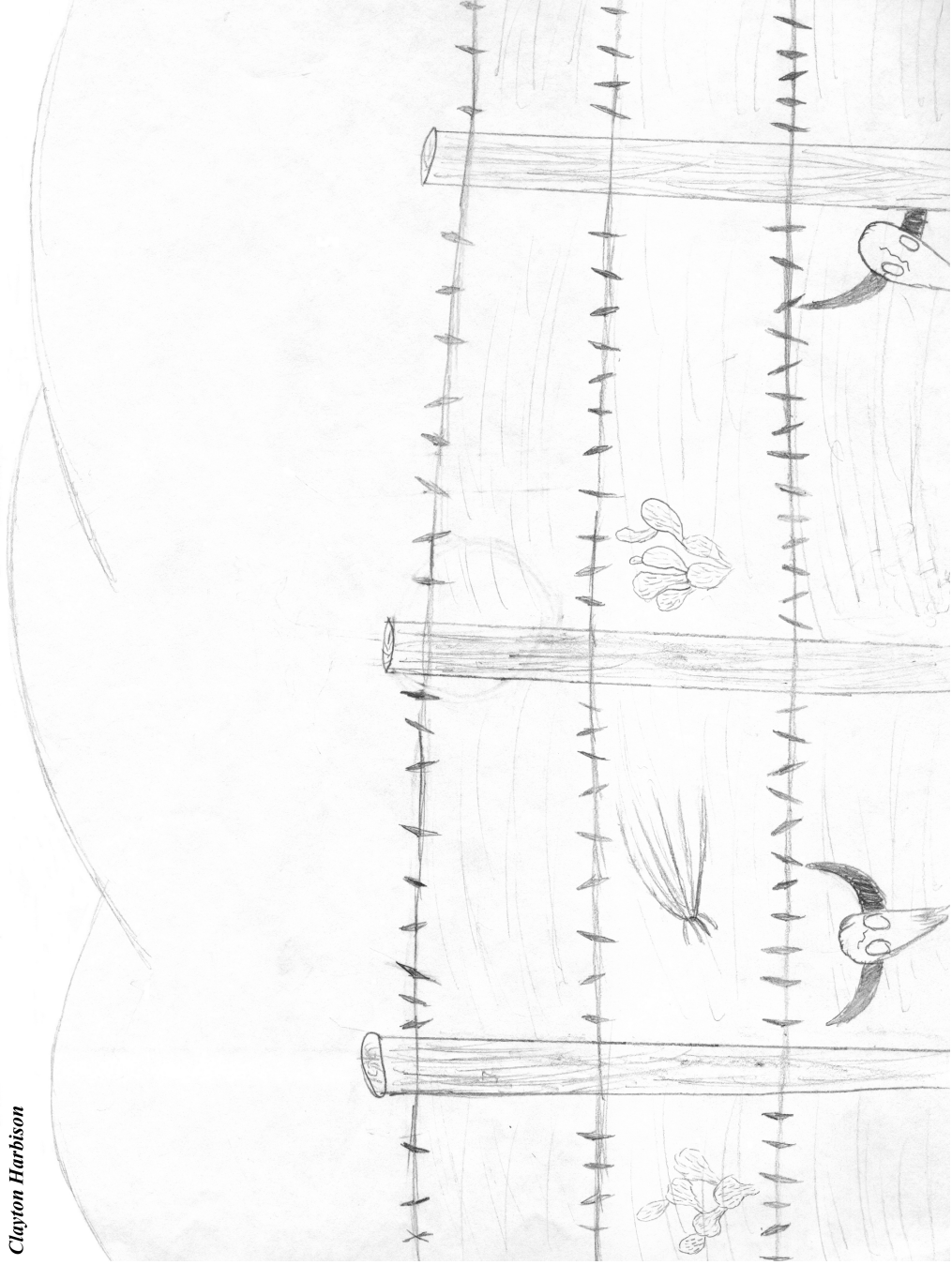
The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201502741  
Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission  
Filed: July 22, 2015



Clayton Harbison



# 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 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 21. STUDENT SERVICES SUBCHAPTER P. LOAN REPAYMENT PROGRAM FOR MENTAL HEALTH PROFESSIONALS

##### 19 TAC §§21.490 - 21.498

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules under Chapter 21, Subchapter P, §§21.490 - 21.498, concerning the Loan Repayment Program for Mental Health Professionals. Senate Bill 239 was signed by the Governor following the 84th Session of the Texas Legislature. Funding for the program is authorized for the 2016-2017 biennium by Contingency Rider 18.60 of the General Appropriations Act. Section 61.608 of the Texas Education Code states that the Coordinating Board shall adopt rules necessary for the administration program no later than December 1, 2015.

Mr. Charles Puls, Deputy Assistant Commissioner, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering these rules.

Mr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be increased access to mental health services in Mental Health Professional Shortage Areas as a result of improved recruitment and/or retention of qualifying mental health professionals. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is a positive impact on local employment in the areas where participating mental health professionals serve.

Comments on the proposal may be submitted to Charles Puls, Deputy Assistant Commissioner, at 1200 E. Anderson Lane, Austin, Texas 78752 or [charles.puls@thehb.state.tx.us](mailto:charles.puls@thehb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.608, which authorizes the Coordinating Board to adopt rules.

No other code or statute is affected by this proposal.

##### §21.490. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter K, Repayment of Cer-

tain Mental Health Professional Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.601 - 61.609.

(b) Purpose. The primary purpose of the Loan Repayment Program for Mental Health Professionals is to encourage qualified mental health professionals to practice in a mental health professional shortage area designated by the U. S. Department of Health and Human Services, and provide mental health care services to recipients under the medical assistance program authorized by the Texas Human Resources Code, Chapter 32, and to enrollees under the child health plan program authorized by the Texas Health and Safety Code, Chapter 62.

##### §21.491. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.

(3) Full-time Service--An average of at least 32.5 hours of direct patient or client care per week during the service period at the Health Professional Shortage Area (HPSA) practice site.

(4) MHPSAs--Mental Health Professional Shortage Areas (MHPSAs) are designated by the U.S. Department of Health and Human Services (HHS) as having shortages of mental health providers and may be geographic (a county or service area), demographic (low income population) or institutional (comprehensive health center, federally qualified health center or other public facility). Designations meet the requirements of Sec. 332 of the Public Health Service Act, 90 Stat. 2270-2272 (42 U.S.C. 254e). Texas MHPSAs are recommended for designation by HHS based on analysis of data by the Department of State Health Services.

(5) Medicaid--The medical assistance program authorized by Chapter 32, Human Resources Code.

(6) Service Period--A period of 12 consecutive months qualifying a mental health professional for loan repayment.

(7) Psychiatrist--A licensed physician who is a graduate of an accredited psychiatric residency training program.

##### §21.492. Eligible Practice Specialties.

For purposes of this subchapter, the following mental health providers may apply for enrollment in the program:

(1) a psychiatrist;

(2) a psychologist, as defined by §501.002, Occupations

Code;

(3) a licensed professional counselor, as defined by §503.002, Occupations Code;

(4) an advanced practice registered nurse, as defined by §301.152, Occupations Code, who holds a nationally recognized board certification in psychiatric or mental health nursing; and

(5) a licensed clinical social worker, as defined by §505.002, Occupations Code.

§21.493. Eligibility for Conditional Approval of Applications.

To be eligible for the Board to reserve loan repayment funds, a mental health professional must:

(1) ensure that the Board has received the completed application by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident and have no license restrictions;

(3) not be currently fulfilling another obligation to provide mental health services as part of a scholarship agreement, a student loan agreement, or another student loan repayment agreement;

(4) agree to provide five consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated;

(5) agree to provide mental health services to:

(A) individuals enrolled in Medicaid and CHIP, if the practice serves children; or

(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(6) the Board may make financial commitments for service periods ending by August 31 of the two-year period following the biennium for which the program funds are appropriated.

§21.494. Selection of Eligible Applicants and Limitations.

(a) Each fiscal year an application deadline will be posted on the program web page.

(b) Not more than 10 percent of the number of repayment assistance grants paid under this subchapter each year may be awarded to mental health professionals providing mental health services to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(c) Not more than 30 percent of the number of repayment assistance grants paid under this subchapter each fiscal year may be awarded to mental health professionals in any one of the eligible practice specialties.

§21.495. Eligibility for Disbursement of Loan Repayment Assistance.

To be eligible to receive loan repayment assistance, a mental health provider must:

(1) have completed one, two, three, four, or five consecutive years of practice in a Mental Health Professional Shortage Area or a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor;

(2) after an award is disbursed for a third consecutive year of service, a psychiatrist must have earned certification from the American Board of Psychiatry and Neurology or the American Osteopathic Board of Psychiatry and Neurology to qualify for continued loan repayment assistance.

§21.496. Eligible Lender and Eligible Education Loan.

(a) The Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, graduate, and professional education and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation.

(b) To be eligible for repayment, an education loan must:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for undergraduate, graduate, or professional education;

(2) not have been made during residency or to cover costs incurred after completion of graduate or professional education;

(3) not be in default at the time of the professional's application;

(4) not have an existing obligation to provide service for loan forgiveness through another program;

(5) not be subject to repayment through another student loan repayment or loan forgiveness program or as a condition of employment; and

(6) if the loan was consolidated with other loans, the applicant must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for his or her undergraduate, graduate, or medical education.

§21.497. Amount of Repayment Assistance.

Loan repayment awards will be disbursed directly to lenders in behalf of eligible mental health professionals and:

(1) repayment assistance for each year of full-time service will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:

(A) for the first year, 10 percent;

(B) for the second year, 15 percent;

(C) for the third year, 20 percent;

(D) for the fourth year, 25 percent; and

(E) for the fifth year, 30 percent.

(2) The total amount of repayment assistance received by a mental health professional under this subchapter may not exceed:

(A) \$160,000, for a psychiatrist;

(B) \$80,000, for:

(i) a psychologist;

(ii) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work; or

(iii) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling;



(C) \$60,000, for assistance an advanced practice registered nurse; and

(D) \$40,000, for a licensed clinical social worker or a licensed professional counselor who has not received a doctoral degree related to social work or counseling.

(3) An eligible professional may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, if providing direct patient or client care for a minimum of 20 hours per week for each service period.

(4) Failure to meet the program requirements will result in non-payment for the applicable service period(s) and, except under circumstances determined by the Board to constitute good cause, removal from the program.

§21.498. Dissemination of Information.

The Board shall disseminate information about the Mental Health Professional Education Loan Repayment program to each institution of higher education or private or independent institution of higher education and to any appropriate state agency and professional association.

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 July 20, 2015.

TRD-201502700

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: August 30, 2015

For further information, please call: (512) 427-6114



## SUBCHAPTER R. DENTAL EDUCATION LOAN REPAYMENT PROGRAM

### 19 TAC §§21.560 - 21.566

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules under Chapter 21, Subchapter R, §§21.560 - 21.566, concerning the Dental Education Loan Repayment Program (DELRP). The General Appropriations Act passed by the 84th Texas Legislature includes appropriations for the DELRP for the 2016-2017 biennium. Because the program had not been funded for two consecutive biennia, the administrative rules were repealed. Section 61.908 of the Texas Education Code states that the Coordinating Board shall adopt rules necessary for the administration of the program.

Mr. Charles Puls, Deputy Assistant Commissioner, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering these rules.

Mr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be increased access to dental services in Dental Health Professional Shortage Areas as a result of improved recruitment and/or retention of dentists, if funding for the program is continued beyond the 2016-2017 biennium. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is a positive impact

on local employment in the areas where participating dentists serve.

Comments on the proposal may be submitted to Charles Puls, Deputy Assistant Commissioner, at 1200 E. Anderson Lane, Austin, Texas 78752 or by e-mail at [charles.puls@theccb.state.tx.us](mailto:charles.puls@theccb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.908, which authorizes the Coordinating Board to adopt rules.

No other code or statute is affected by this proposal.

§21.560. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter V, Repayment of Certain Dental Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.901 - 61.910.

(b) The purpose of the Dental Education Loan Repayment Program is to recruit and retain qualified dentists to provide dental services in areas of the state that are underserved with respect to dental care.

§21.561. Definitions.

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

(1) Underserved Area with Respect to Dental Care--Dental Health Professional Shortage Areas of Texas (Dental HPSAs) designated by the federal Health Resources and Services Administration.

(2) Federally Qualified Health Centers (FQHCs)--Organizations receiving grants under Section 330 of the Public Health Service Act (PHS), qualifying for enhanced reimbursement from Medicare, Medicaid, and Children's Health Insurance Program and other benefits. FQHCs must serve an underserved area or population, offer a sliding fee scale, provide comprehensive services, have an ongoing quality assurance program, and have a governing board of directors.

(3) Nonprofit Practice--A clinical practice that is tax-exempt under §501(c)(3) of the Internal Revenue Code.

(4) State Hospital--A hospital authorized by Title 7, Subtitle B, Chapter 552 of the Texas Health and Safety Code, primarily to provide inpatient care and treatment of persons with mental illness.

(5) State-supported Living Center--A state-supported and structured facility operated by the Department of Aging and Disability Services to provide to clients with intellectual disabilities a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, pursuant to Title 7, Subtitle A, Chapter 531 or the Texas Health and Safety Code.

(6) Service Period--A twelve-month period of service that qualifies an eligible dentist for an annual education loan repayment, beginning on the date the application is received by the board or the date eligible service began, whichever is later.

(7) Program--The Dental Education Loan Repayment Program.

(8) CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.

(9) Medicaid--The medical assistance program authorized by Chapter 32, Human Resources Code.

(10) Full-time Service--An average of at least 32.5 hours of direct patient care hours per week during the service period at the Dental HPSA site.

(11) Commissioner--The Commissioner of Higher Education in Texas.

(12) Board--The Texas Higher Education Coordinating Board.

§21.562. Priorities of Application Acceptance.

(a) Each fiscal year, applications received by the deadline posted on the program web page will be ranked according to Dental HPSA scores for the applicants' practice locations, with the highest scores representing the highest degrees of dental shortages. Dental HPSAs having the same Dental HPSA score will be ranked according to the following criteria, in order of priority:

- (1) Federally Qualified Health Center (FQHC);
- (2) Nonprofit practice;
- (3) State hospital or state-supported living center.

(b) The amount of available funding will determine how many applicants will be selected for conditional application approval.

§21.563. Eligible Lender and Eligible Education Loan.

(a) The Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, graduate, or professional education and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution or higher education, secondary market, governmental agency, or private foundation.

(b) To be eligible for repayment, an education loan must:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for undergraduate, graduate, or professional education;

(2) not have an existing obligation to provide service for loan forgiveness through another program;

(3) not be subject to repayment through another student loan repayment program, loan forgiveness program, or as an employment benefit or condition at the time of application and disbursement;

(4) if consolidated with other student loans, be supported by documentation provided by the dentist showing the portion of the consolidated debt that was originated to pay for the cost of attendance for the dentist's undergraduate, graduate, or professional education.

§21.564. Eligible Dentist.

(a) To be eligible for conditional approval, contingent upon completion of the service period, an applicant must:

(1) be licensed by the Texas State Board of Dental Examiners and have no disciplinary action against him/her;

(2) agree to provide at least twelve consecutive months of comprehensive, general or pediatric dental services in an area that is underserved with respect to dental care; and

(3) submit a completed application to the Board by the published deadline.

(b) To be eligible for disbursement of a loan repayment award, a dentist whose application was conditionally approved must:

(1) have provided at least twelve consecutive months of comprehensive general or pediatric dental services, for an average of

at least 32.5 hours of direct patient care per week, in an area that is underserved with respect to dental care;

(2) during the service period, have provided direct patient care to Medicaid enrollees and CHIP enrollees; and

(3) ensure that the Board has received all required end-of-service period verification forms by the established deadline.

§21.565. Amount of Repayment Assistance.

(a) The maximum annual award amount to be disbursed to lenders shall be \$10,000 unless the commissioner or his or her delegate determines that the amount of available funding is sufficient to increase the award amount.

(b) A dentist may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, if providing comprehensive direct patient care for a minimum of 20 hours per week for the service period.

§21.566. Dissemination of Information.

The Board shall distribute rules and pertinent information about the Dental Education Loan Repayment Program to each dental school in the state and appropriate state agencies, professional associations, and other entities.

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 July 20, 2015.

TRD-201502701

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: August 30, 2015

For further information, please call: (512) 427-6114



## TITLE 22. EXAMINING BOARDS

### PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

#### CHAPTER 363. EXAMINATION AND REGISTRATION

##### 22 TAC §363.14

The Texas State Board of Plumbing Examiners (Board) proposes nonsubstantive amendments to §363.14, relating to guidelines to determine the fitness of a person who has been convicted of a crime. The proposed amendments are made to correct three nonsubstantive errors in the previously adopted text. In addition, changes made to subsection (d)(1) and (2) will provide further clarification regarding the criminal offenses classified as risk levels one and two by the Enforcement Committee.

##### Background and Justification:

These guidelines are used by the Board to determine the fitness of a person who has been convicted of a felony or misdemeanor to perform the duties and discharge the responsibilities of registered and licensed individuals who perform plumbing and plumbing inspections. Under the authority of Chapters 53 and 1301 of the Texas Occupations Code, the Board may suspend, probate

a suspension of, or revoke a registration, license, or endorsement, or deny a person the opportunity to take a licensing or endorsement examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the occupation of registered or licensed individuals performing plumbing and plumbing inspections.

**Fiscal Note:**

Lisa G. Hill, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no additional cost to state or local governments as a result of enforcing or administering the amendment. Ms. Hill has determined that there will be no economic cost to individuals. Ms. Hill has also determined there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in effect between small and large businesses.

**Public Benefit:**

Ms. Hill has concluded that for each year of the first five years the rule amendment is in effect, the anticipated public benefit is to provide the Board with greater clarification of its enforcement authority and protect the health, safety, and welfare of the public.

**Public Comment:**

The Texas State Board of Plumbing Examiners invites comments on this proposed rule amendment from any member of the public within 30 days. Written comments should be mailed to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; faxed to her attention at (512) 450-0637; or sent by email to [info@tsbpe.texas.gov](mailto:info@tsbpe.texas.gov).

**Statutory Authority:**

The amendments to §363.14 are proposed under and affect Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code. Further, each licensing agency shall issue guidelines relating to the practice of the licensing authority pursuant to §53.025 of the Texas Occupations Code.

No other statute, article, or code is affected by this proposed rule amendment.

*§363.14. Criminal Conviction Guidelines.*

(a) Pursuant to Chapter 53 and Chapter 1301, §1301.4521 of the Occupations Code and §363.2 of the rules of the Texas State Board of Plumbing Examiners (Board), these guidelines are issued by the Board to be used, in conjunction with Chapter 53 and Chapter 1301, §1301.4521 of the Occupations Code and Board Rule §363.2, by the Board's Enforcement Committee to determine the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections.

(b) Licensed individuals are usually required to perform plumbing or plumbing inspections without direct supervision of any other person and must be trusted to carry out their duties and responsibilities without risking the health, safety, welfare and property of the public. Plumber's Apprentices are usually required to be supervised by a licensed plumber. However, it is estimated that the majority of Plumber's Apprentices are working towards licensure, therefore, the same factors must be considered for registrants. The duties and responsibilities of individuals performing plumbing or plumbing inspections include, but are not limited to:

(1) entering persons' homes and places of business to perform or inspect plumbing work including, but are not limited to:

- (A) private residences;
- (B) apartment complexes;
- (C) schools;
- (D) child care facilities;
- (E) elder care facilities;
- (F) medical care facilities;
- (G) financial institutions; and
- (H) businesses where valuable merchandise is stored and sold.

(2) making personal contact with persons who have requested plumbing work to be performed or inspected, including elderly persons and minor children of the persons who have made the request;

(3) engaging in contractual and financial transactions with persons who have requested plumbing work to be performed;

(4) being entrusted by employers to be responsible for the employers' vehicles and tools necessary to perform plumbing or plumbing inspections.

(5) ensuring safety when working with hazardous, explosive or volatile materials;

(6) complying with laws, rules, ordinances and codes that regulate plumbing; and

(7) working with officials who are carrying out their duties to enforce laws, rules, ordinances and codes that regulate plumbing including:

- (A) Field Representatives of the Board;
- (B) Plumbing Inspectors; and
- (C) other law enforcement officers.

(c) Due to the nature of the duties and responsibilities stated in subsection (b)(1) - (7), the Board has determined that the holder of any registration or license issued by the Board would have an opportunity to commit certain crimes while performing plumbing or plumbing inspections. The Board has determined that the following crimes directly relate to the duties and responsibilities of all individuals registered or licensed by the Board (list is not all inclusive):

(1) Any crime of a sexual nature that requires the convicted person to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure, including:

- (A) Aggravated Sexual Assault (victim of any age);
- (B) Aggravated Rape (victim of any age);
- (C) Sexual Assault (victim of any age);
- (D) Rape (victim of any age);
- (E) Statutory Rape;
- (F) Indecency With a Child (including exposure);
- (G) Prohibited Sexual Conduct;
- (H) Sexual Performance by a Child;
- (I) Possession or Promotion of Child Pornography;
- (J) Aggravated Kidnapping (with the intent to commit an illegal act of a sexual nature);

(K) Kidnapping (with the intent to commit an illegal act of a sexual nature);

(L) Unlawful Restraint (with the intent to commit an illegal act of a sexual nature);

(M) Burglary (with the intent to commit an illegal act of a sexual nature);

(N) Indecent Exposure;

(O) Public Lewdness; or

(P) Improper Photography or Visual Recording.

(2) Any crime of a sexual nature listed in subsection (c)[(b)](1)(A) - (P), regardless of whether or not the convicted person is required to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure;

(3) Capital Murder;

(4) Murder;

(5) Criminal Negligent Homicide;

(6) Manslaughter;

(7) Aggravated Kidnapping;

(8) Kidnapping;

(9) Unlawful Restraint;

(10) Injury to a Child, Elderly Individual or Disabled Individual;

(11) Burglary of a Habitation;

(12) Burglary of a Building;

(13) Burglary of an Automobile;

(14) Robbery;

(15) Theft (felony);

(16) Fraud (felony);

(17) Forgery (felony);

(18) Arson;

(19) Aggravated Assault of a Police Officer (or other public official);

(20) Aggravated Assault;

(21) Assault;

(22) Illegal Drug Related Crimes (felony);

(23) Terroristic Threat; or

(24) Any criminal violation of laws or ordinances that regulate plumbing or the practice of plumbing.

(d) The Enforcement Committee shall use the following established levels of risks in determining the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections. The levels of risk are listed in the order of highest to lowest. The Enforcement Committee shall consider those applicants with convictions of a sexual nature or first degree felony to be the highest risk and those applicants who have a conviction other than that of a sexual nature or first degree felony, and who have completed all required consequences of the conviction more than five years prior to the date of application to be the lowest risk.

(1) Level One - Applicants who have a conviction of a sexual nature listed in subsection (c)[(b)](1)(A) - (P), regardless of whether or not the convicted person is required to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure or a first-degree felony.

(2) Level Two - Applicants who have a conviction for a [~~first-degree~~ or] second-degree felony.

(3) Level Three - Applicants who have a conviction other than specified in Level One or Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed less than five years prior to the date of application, or are still being completed.

(4) Level Four - Applicants who have convictions other than specified in Level One and Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed more than five years prior to the date of application. Written proof of completion from the court, probation or parole officer must be submitted by the applicant.

(e) Applicants with multiple convictions will be considered an increased risk, depending on the number and types of convictions.

(f) The Enforcement Committee shall use these guidelines and follow the requirements of Board Rule §363.2 when reviewing applications for registration, examination and renewal of registrations, licenses and endorsements, to determine the fitness of applicants.

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 July 15, 2015.

TRD-201502679

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: August 30, 2015

For further information, please call: (512) 936-5224



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 1. GENERAL LAND OFFICE

#### CHAPTER 15. COASTAL AREA PLANNING

##### SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

###### 31 TAC §15.30

The General Land Office (GLO) proposes an amendment to §15.30 (relating to Certification Status of the City of South Padre Island Dune Protection and Beach Access Plan) to authorize the City of South Padre Island (the City) to charge a beach user fee (BUF). The GLO proposes to add new subsection (e) to certify as consistent with state law the City's adoption of a beach user fee plan (BUF Plan) for parking.

###### BACKGROUND AND SECTION BY SECTION ANALYSIS OF THE PROPOSED AMENDMENTS

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Texas Administrative Code (31 TAC

§15.3 and §15.8), a local government with jurisdiction over Gulf Coast beaches must submit its dune protection and beach access plan and BUF Plan to the GLO for certification. The local government must submit the BUF Plan to the GLO for review and, if appropriate, the GLO can certify that the BUF Plan is consistent with state law by amendment of a rule as authorized in Texas Natural Resources Code §61.011(d)(5) and §61.015(b). The certification by rule reflects the state's certification of the BUF Plan, but the text of the BUF Plan is not adopted by the GLO as provided in 31 TAC §15.3(o)(4).

The City Council amended Section 18-19.4 of its Code of Ordinances to adopt the BUF on May 20, 2015. The ordinance becomes effective upon the GLO's approval of the BUF Plan. The Plan was submitted to the GLO with a request for certification of the BUF Plan as consistent with state law. The BUF Plan is submitted in accordance with 31 TAC §15.8 and Texas Natural Resources Code §61.022(c).

The City is a coastal community in Cameron County that is located at the south end of the South Padre Island barrier island, bordering the Laguna Madre and the Gulf of Mexico. The City's Dune Protection and Beach Access Plan was first adopted on October 5, 1994, and most recently amended to adopt an Erosion Response Plan, which was certified by the GLO as consistent with state law and became effective April 17, 2013. In accordance with 31 TAC §15.8(k), the BUF Plan shall be part of the City's Dune Protection and Beach Access Plan.

#### ANALYSIS OF THE BEACH USER FEE PLAN AND GLO'S PROPOSED AMENDMENTS TO 31 TAC §15.30.

As provided in 31 TAC §15.8, local governments may request authorization to adopt a BUF provided that the local government demonstrates that there are costs to the local government for providing public services and facilities directly related to the public beach. Pursuant to 31 TAC §15.3 and §15.8, the City adopted the BUF and submitted a BUF Plan to the GLO with a request for certification that the BUF Plan is consistent with state law. The BUF Plan adopts a fee of up to \$13 dollars a day and an annual fee of up to \$50 for designated parking areas. The BUF will be charged for parking along Gulf Boulevard and at most access point cul-de-sacs from March 1st - September 15th from 8:00 a.m. to 8:00 p.m. The BUF will be collected through an internet-based pay system which will require the patron to use a smart phone, a phone that texts, or any phone. Cash payments will also be collected at City Hall during the week and the Visitors Center and Police Station on the weekends. Signage at the pay stations will provide information on where cash payments can be made.

Persons displaying a disabled placard or license plate do not need to pay the BUF. Free parking spaces will be dedicated. Forty-five free parking spaces will be provided at three beach access cul-de-sacs and free parking spaces will also be provided at other locations both east and west of Padre Boulevard. Beachgoers will be able to use the City's free "Wave" bus transportation system, which runs on 30-minute intervals 365 days a year, from 7:00 a.m. to 9:00 p.m. to access the beach from remote parking areas.

In the short term, the BUF fees will be used to increase parking adjacent to the beach; expand beach cleaning and maintenance by purchase of beach equipment, create a recycling program, install educational beach maintenance signage; and improve beach access by rehabilitating beach walkovers, con-

structing new walkovers, and installing rinse stations and drinking water stations.

In the long term, the BUF fees will be used to procure and construct additional parking east of Padre Island Boulevard; improve parking, beach access points and pedestrian pathways; develop a trolley system to enhance public access to the beach from remote off beach parking areas; and provide public restrooms along the beach or at beach access points.

The proposed BUF Plan requests a variance from 31 TAC §15.7(h)(1)(A), which requires parking adjacent to the beach to accommodate one car per 15 linear feet of beach. According to the City, historic, physical, and geographic constraints adjacent to the beach, as well as economic constraints, make it difficult to acquire the rights to the land necessary to provide the required parking. In order to obtain the variance, the City commits to devoting 50% of BUF revenue to increasing public parking adjacent to the beach. The City will purchase land or obtain long-term leases for parking east of Padre Boulevard within two to eight years after implementation of the BUF. The additional lots will provide up to 180 additional parking spaces. Over the long term, the City will develop a trolley system to enhance public access to the beach. The City has provided adequate justification for a variance from the requirements of 31 TAC §15.7(h)(1)(A).

Based on the information and justification provided by the City, the GLO has determined that the BUF is reasonable. The BUF does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act. Therefore, the GLO finds that the BUF Plan is consistent with state law.

#### FISCAL AND EMPLOYMENT IMPACTS

Mr. Jorge Ramirez, Deputy Director of Coastal Resiliency and Recovery, has determined that for each year of the first five years the amended section as proposed is in effect, there will be minimal fiscal implications for the state government as a result of oversight and enforcement of the BUF program. The City estimates it will collect \$271,440 in net revenue for each year of the first five years the proposed section is in effect that will be used to pay for beach-related services.

Mr. Ramirez has determined that the proposed amendment will not affect the costs of compliance for small businesses or micro-businesses as the proposed changes relate to individual permits for parking on the beach and are not related to the permitting or restriction of business activities. Mr. Ramirez has also determined that for each year of the first five years the proposed amendment is in effect, there will be no impacts to the local economy.

#### PUBLIC BENEFIT

Mr. Ramirez has determined that the public will be affected by the adoption of the BUF because individuals will be required to pay a BUF for parking in specific areas. This impact is mitigated by the availability of free parking, as required by 31 TAC §15.8(h), in three cul-de-sacs in and around Gulf Boulevard and in areas east and west of Padre Boulevard. The BUF benefits the public by funding the expansion for beach parking options adjacent to the beach and in other areas. The BUF also benefits the public and beachgoers by funding beach related services

such as trash collection, improving beach access and parking signage, and providing beachgoers with enhanced amenities.

#### ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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 the state or a sector of the state. The proposed amendments are not anticipated to 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 the state or a sector of the state. The amendment is proposed under Texas Natural Resources Code §§61.011, 61.015(b), and 61.022 (b) and (c), and 61.070, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and have access to public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

#### TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. GLO has determined that the proposed amendments would not affect any private real property in a manner that restricts or limits any owner's right to property or use of that property.

#### CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in the Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and (c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determined that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §501.12(5). These goals seek to balance the benefits of economic development and multiple human uses, protecting, preserving, restoring, and enhancing CNRAs, and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §501.12(5) as they provide the City with the ability to enhance public access and enjoyment of the coastal zone, protect and

preserve and enhance the CNRA, and balance other uses of the coastal zone.

The proposed rules are also consistent with CMP policies in §501.26(a)(4) by enhancing and preserving the ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches.

#### PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to [walter.talley@glo.texas.gov](mailto:walter.talley@glo.texas.gov). Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code §§61.011, 61.015(b), 61.022(b) and (c), and 61.070, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §61.011 and §61.015 are affected by the proposed amendments.

*§15.30. Certification Status of City of South Padre Island Dune Protection and Beach Access Plan.*

(a) The City of South Padre Island has submitted to the General Land Office a dune protection and beach access plan (plan) which is certified as consistent with state law. The plan was adopted on October 5, 1994.

(b) The General Land Office certifies that the amendment to the plan adopted by the Board of Aldermen on May 7, 2003, is consistent with state law.

(c) The General Land Office further certifies that the amendment to the plan adopted by the Board of Aldermen as Ordinance No. 05-07 on May 4, 2005, is consistent with state law.

(d) The General Land Office certifies that the amendment to the plan adopted by the City Council as Ordinance No. 12-09 on August 1, 2012, is consistent with state law. The Ordinance amended the plan by adding the City of South Padre Island Erosion Response Plan as an appendix to the plan.

(e) The General Land Office certifies that the Beach User Fee and the Beach User Fee Plan adopted by the City Council in Ordinance Number 15-06 on May 20, 2015 is consistent with state law. The Plan adopts a Beach User Fee of up to \$13.00 dollars a day and an annual fee of up to \$50.00.

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 July 20, 2015.

TRD-201502699

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: August 30, 2015

For further information, please call: (512) 475-1859

# 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 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 97. PLANNING AND ACCOUNTABILITY

##### SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

###### 19 TAC §97.1001

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the html version of the July 31, 2015, issue of the Texas Register online.)*

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning accountability. The amendment is adopted with changes to the proposed text as published in the May 29, 2015 issue of the *Texas Register* (40 TexReg 2909). The section describes the state accountability rating system and annually adopts the most current accountability manual. The amendment adopts applicable excerpts of the *2015 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

**REASONED JUSTIFICATION.** The TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2015 Accountability Manual* into rule as a figure. The excerpts, *Chapters 2-9 of the 2015 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. The TEA will issue accountability ratings and distinction designations under the procedures specified in the *2015 Accountability Manual* by August 7, 2015. Ratings and distinction designations may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.

In 2015, campuses and districts will be evaluated using a performance index framework. The framework includes the four

indexes used in previous years. These indexes include performance on the State of Texas Assessments of Academic Readiness (STAAR®) assessments for Grades 3-8 and end-of-course longitudinal graduation rates, the four-year Recommended High School Program/Distinguished Achievement Program graduation rate, and annual dropout rates. These indexes incorporate the various criteria mandated by statute as set out in the statutory authority section. In 2015, the distinction designations system will award seven distinctions to eligible campuses that receive a *Met Standard* rating: Academic Achievement in Reading/English Language Arts, Academic Achievement in Mathematics, Academic Achievement in Science, Academic Achievement in Social Studies, Top 25 percent Student Progress, Top 25 percent Closing Performance Gaps, and Postsecondary Readiness. Districts will be eligible for a distinction designation for Postsecondary Readiness.

There are four substantive changes to the accountability system for 2015. First, results of STAAR® assessments for mathematics, Grades 3-8, are excluded from state accountability ratings for districts, campuses, and charter schools. Because 2014-2015 was the implementation year of new mathematics Texas Essential Knowledge and Skills (TEKS) at Grades 3-8, these assessments are excluded in recognition of the time needed to transition to the increased rigor of the new TEKS. Second, results of STAAR A and STAAR Alternate 2 assessments for all subjects, grades, and courses are also excluded from the accountability system because these assessments were administered for the first time in 2015. Third, the postsecondary readiness component of Index 4 has been expanded to include graduates who demonstrate postsecondary readiness through any of the following means: meeting or exceeding the Texas Success Initiative (TSI) criteria in both English language arts (ELA) and mathematics on the Texas Assessment of Knowledge and Skills (TAKS) exit-level test, SAT®, or ACT®; earning credit for two or more advanced/dual-credit courses; or enrolling in a coherent sequence of career and technical education (CTE) courses as part of a four-year plan of study to take two or more CTE courses for three or more credits.

The commissioner determined that meeting those requirements were an adequate proxy for college readiness in the accountability system. Fourth, and finally, in order to address the changes to the STAAR® student assessment program, districts, campuses, and charter schools are required to meet only three of the four indexes in order to be rated as acceptable in the accountability system. To earn a *Met Standard* or *Met Alternative Standard* rating, districts and campuses must meet the target on either Index 1 or Index 2 and meet the targets on both Index 3 and Index 4.

In addition to technical edits in subsection (a) to list applicable statutes, the adopted amendment includes the following two changes to Figure: 19 TAC §97.1001(b) (excerpts of the *2015 Accountability Manual*).

In response to public comment, language was added to page 15 to make clear that if test documents are lost in transit between a district and the test contractor, an affected district or campus may receive a rating of *Not Rated*.

This modification was made to adequately address recent concerns about the potential effect of loss of student test documents on a district's, campus's, or charter school's accountability rating.

In response to public comment, language was added to pages 24, 26, 39, and 45 to address English language learners (ELLs) who are not eligible for an ELL progress measure solely because their number of years in U.S. schools (as reported on the Texas English Language Proficiency Assessment System (TELPAS)) exceeds their ELL plan year. These students will be evaluated in the same manner as ELLs with parental denials for instructional services.

This amendment addresses the unintended consequence that assessment results for ELLs without an ELL progress measure solely because their number of years in U.S. schools (as reported on TELPAS) exceeds their ELL plan year would be excluded from the accountability system.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** The public comment period on the proposal began May 29, 2015, and ended June 29, 2015. Following is a summary of the public comments received and corresponding agency responses regarding the adopted amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1001, Accountability Rating System.

**Comment:** Richardson Independent School District (ISD) requested that the results of assessments in mathematics, Grades 3-8, be included in Index 1, Index 3, and Index 4 and that a hold-harmless provision be applied. Richardson ISD stated that excluding Grades 3-8 mathematics from accountability will result in an unbalanced accountability system that is based disproportionately on language arts and will misidentify "Improvement Required" districts and campuses. Richardson ISD also contended that including Grades 3-8 mathematics with a hold-harmless provision would credit districts and campuses for strong math performance without punishing districts and campuses in a new mathematics implementation year. Fifty-one staff members and two parents from Richardson ISD submitted the same comment along with eight staff members from San Antonio ISD and one staff member from each of the following districts: Alief ISD, Allen ISD, Dallas ISD, Dumas ISD, Granbury ISD, Houston ISD, Irving ISD, Mercedes ISD, and Northside ISD. Additionally, State Representative Ryan Guillen submitted a comment expressing concern about the impact of excluded tests on campuses where reading is the sole test administered.

**Agency Response:** The agency disagrees. Including mathematics, Grades 3-8, with a hold-harmless provision was discussed by both accountability advisory committees. The Accountability Technical Advisory Committee (ATAC) chose not to recommend the hold-harmless provision; the Accountability Policy Advisory Committee (APAC) recommended a hold-harmless provision. The commissioner considered the recommendations and had numerous discussions with teachers, parents, and superintendents across the state. Because an accountability system that rewards acceptable performance but overlooks unacceptable performance is incongruous, the decision to be made was whether to include or exclude mathematics outright. In recognition of the time needed to transition to the new mathematics TEKS, the decision was to exclude mathematics. Accordingly,

the agency has not updated Figure: 19 TAC §97.1001(b) in response to this comment.

**Comment:** State Representative Ryan Guillen, three staff members from Charlotte ISD, and one teacher from an undisclosed district requested that the agency reevaluate calculations for Index 4 for elementary campuses that do not serve fifth grade. The commenters' suggestions included requiring students to meet the STAAR® postsecondary readiness standard on only one test instead of two for campuses that do not serve Grade 5 and/or requiring these campuses to meet the target on any three of the four indexes in order to receive the Met Standard rating.

**Agency Response:** The agency disagrees. For the purposes of accountability, every campus in Texas is labeled as one of four school types--elementary, middle, elementary/secondary, and high--based on the grades that are served. A campus that serves up to Grade 4 is considered an elementary campus and must meet the same indexes and targets as all other elementary campuses. Each year, the agency carefully considers the diversity of districts and campuses across the state and accommodates this diversity in making accountability decisions that preserve the integrity of the system. Requiring students in some elementary schools to meet the postsecondary readiness standard on two tests while requiring students in other elementary schools to meet the standards on only one test would contravene this integrity. Furthermore, accountability advisory committees considered recommending that districts and campuses meet any three indexes in order to receive a Met Standard rating. The accountability advisory committees ultimately decided against the recommendation because it lacked rigor. Accordingly, the agency has not updated Figure: 19 TAC §97.1001(b) in response to this comment.

**Comment:** An administrator from Houston ISD recommended that language be added to the reasons for which a campus or district can receive a Not Rated label. The suggested language is "Data are not available upon which to determine a campus' or district's accountability rating through no fault or action of the campus or district."

**Agency Response:** The agency agrees that a district or campus could receive a Not Rated label if assessment answer documents are lost during shipment between the school district and the test contractor; however, the agency disagrees with the suggested wording. Accordingly, the agency has updated Figure: 19 TAC §97.1001(b) to list the following as a reason that a district or campus might receive a Not Rated label: "The test documents for either the district or campus were lost in transit between the district and the test contractor."

**Comment:** One staff member each from La Joya ISD, Mission ISD, Port Isabel ISD, and San Antonio ISD recommended including in Index 1 and Index 3 ELLs who are in years 2, 3, or 4, tested in English, and have exceeded the years in U.S. schools in their ELL Progress Plan.

**Agency Response:** The agency agrees. Accordingly, the agency has updated Figure: 19 TAC §97.1001(b) to reflect that English language learners who are not eligible for an ELL progress measure solely because their number of years in U.S. schools (as reported on Texas English Language Proficiency Assessment System) exceeds their ELL plan year will be evaluated in the same manner as ELLs with parental denials for instructional services.

**STATUTORY AUTHORITY.** The amendment is adopted under the Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053 and 39.054, as those sections existed on January 1,



2015; §39.0545, as added by Senate Bill 1538, 83rd Texas Legislature, Regular Session, 2013, and as that section existed on January 1, 2015; §39.0545, as added by House Bill 5, 83rd Texas Legislature, Regular Session, 2013; §§39.055, 39.151, 39.201, 39.202, 39.203, 29.081(e); and §12.104(b)(2)(L). TEC, §39.052(a) and (b)(1)(A), require the commissioner of education to determine the accreditation status of each school district using the results of statewide assessments along with other indicators. TEC, §39.053, as that section existed on January 1, 2015, requires the commissioner to adopt a set of indicators of the quality of learning and student achievement. TEC, §39.054, as that section existed on January 1, 2015, requires the commissioner to evaluate the performance of each district, campus, and open-enrollment charter based on the indicators adopted under TEC, §39.053, and assign ratings that reflect acceptable and unacceptable performance. TEC, §39.0545, as added by Senate Bill 1538, 83rd Texas Legislature, Regular Session, 2013, and as that section existed on January 1, 2015, defines a dropout recovery school and prescribes indicators to be evaluated for a dropout recovery school. TEC, §39.0545, as added by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, requires each district and charter to assign ratings to itself and each of its campuses for community and student engagement and to report these ratings to the TEA and make the ratings publicly available before August 8 of each year. TEC, §39.055, prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability. TEC, §39.151, requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39. This process must include a committee to make recommendations to the commissioner. TEC, §39.201, requires the commissioner of education to award distinction designations for outstanding performance to eligible campuses and districts. TEC, §39.202, requires the commissioner to establish a distinction designation for postsecondary readiness and lists criteria upon which it may be awarded. TEC, §39.203, requires the commissioner to award distinction designations in the areas of student improvement; closing performance gaps among student groups; and outstanding academic performance in English language arts, mathematics, science, and social studies. TEC, §29.081(e), specifies that a district may use a private or public community-based dropout recovery education program to provide alternative education to its students only if that program receives an accountability rating that indicates acceptable performance under alternative education accountability provisions. TEC, §12.104(b)(2)(L), applies accountability provisions to open-enrollment charters. These provisions authorize and require the commissioner's rules implementing the academic accountability system's methodology, calculation, application, and appeals process.

**CROSS REFERENCE TO STATUTE.** The amendment implements the TEC, §§39.052(a) and (b)(1)(A), 39.053, and 39.054, as those sections existed on January 1, 2015; §39.0545, as added by Senate Bill 1538, 83rd Texas Legislature, Regular Session, 2013, and as that section existed on January 1, 2015; §39.0545, as added by House Bill 5, 83rd Texas Legislature, Regular Session, 2013; and §§39.055, 39.151, 39.201, 39.202, 39.203, 29.081(e), and 12.104(b)(2)(L).

*§97.1001. Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053 and 39.054, as those sections existed on January 1,

2015; 39.0545, as added by Senate Bill 1538, 83rd Texas Legislature, Regular Session, 2013, and as that section existed on January 1, 2015; 39.0545, as added by House Bill 5, 83rd Texas Legislature, Regular Session, 2013; 39.055; 39.151; 39.201; 39.202; 39.203; 29.081(e); and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2015 are based upon specific criteria and calculations, which are described in excerpted sections of the *2015 Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner of education and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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 July 15, 2015.

TRD-201502684

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 29, 2015

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



**CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING**  
**SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY**  
**DIVISION 1. FINANCIAL ACCOUNTABILITY RATING SYSTEM**

The Texas Education Agency (TEA) adopts the repeal of §§109.1001-109.1005 and new §109.1001, concerning the financial accountability rating system. The repeal is adopted without changes to the proposed text as published in the May

22, 2015 issue of the *Texas Register* (40 TexReg 2724) and will not be republished. New §109.1001 is adopted with changes to the proposed text as published in the May 22, 2015 issue of the *Texas Register* (40 TexReg 2724). The sections establish provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system. The adopted repeals and new rule implement the requirements of the Texas Education Code (TEC), §§39.082, 39.083, and 39.085, as added by House Bill (HB) 3, 81st Texas Legislature, 2009, and amended by HB 5, 83rd Texas Legislature, Regular Session, 2013, that charge the Texas Education Agency (TEA) with implementing a financial accountability rating system that includes processes for anticipating the future financial solvency of each school district and open-enrollment charter school, including analysis of district and school revenues and expenditures for preceding school years. The financial accountability rating system also includes indicators that measure the financial management performance and future financial solvency of a district or an open-enrollment charter school. School district ratings are referred to as School FIRST, and open-enrollment charter school ratings are referred to as Charter FIRST. The adoption also implements the TEC, §39.151, which requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under the TEC, Chapter 39, and implements the TEC, §12.104(b)(2)(L), which applies accountability provisions to charters.

**REASONED JUSTIFICATION:** Rules in 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability, Division 1, Financial Accountability Rating System, establish provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with Senate Bill 218, 77th Texas Legislature, 2001, and House Bill 3, 81st Texas Legislature, 2009. The rules, which were initially adopted effective October 20, 2002, and last amended effective October 3, 2013, include the financial accountability rating system and rating worksheets that explain the indicators that the TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rules also specify the minimum financial accountability rating information that a school district and an open-enrollment charter school is to report to parents and taxpayers in the district.

HB 5, Section 49, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, §39.082, requiring that the commissioner of education include in the financial accountability rating system processes for anticipating the future financial solvency of each school district and open-enrollment charter school, including analysis of district and school revenues and expenditures for preceding school years. The TEC, §39.082, also requires the commissioner to adopt rules by which to measure the financial management performance and future financial solvency of a district or an open-enrollment charter school and sets forth specific requirements relating to indicators adopted by the commissioner and the assignment of ratings.

#### *Adopted Repeal of 19 TAC §§109.1001 - 109.1005*

The adopted repeal of 19 TAC §§109.1001 - 109.1005 removes outdated provisions. Continuing provisions are adopted in new 19 TAC §109.1001 along with new provisions that align with the amended TEC, §39.082. Following is a description of the

changes from repealed 19 TAC §§109.1001 - 109.1005 to the adopted new 19 TAC §109.1001.

The adopted repeal of 19 TAC §109.1001, Purpose of Financial Accountability Rating System, removed the provisions of this section in their entirety because the TEC, §39.082 and §39.085, contain the purpose and the requirements for implementation of the Financial Accountability Rating System.

The adopted repeal of 19 TAC §109.1002, Financial Accountability Ratings, resulted in the following.

Provisions in subsection (a), relating to assignment of ratings and the evaluation and modification of the rating system, were adopted in new 19 TAC §109.1001(b) and (c), respectively. Revisions were made to describe the requirements using plain language.

Provisions in subsections (b) - (g), relating to ratings and worksheets from previous fiscal years, were repealed in their entirety in order to remove outdated provisions. Similar, clarified provisions that apply to school districts and open-enrollment charter schools beginning with indicators for rating year 2014-2015 were adopted in new 19 TAC §109.1001(e) and (f), respectively.

Provisions in subsection (h), relating to a financial accountability rating by a voluntary association, were adopted in new 19 TAC §109.1001(n).

Provisions in subsection (i)(1), relating to the rating a school district or open-enrollment charter school receives for substandard data quality, were repealed in order to remove outdated provisions.

Provisions in subsection (i)(2), relating to the appeals process, were removed, revised, and relocated to adopted new 19 TAC §109.1001(k) - (m) to implement the appeals process that aligns with statute in TEC, §§39.082, 39.085, and 39.151.

The adopted repeal of 19 TAC §109.1003, Types of Financial Accountability Ratings, resulted in the following.

Provisions in subsection (a), relating to the types of financial accountability ratings a school district or an open-enrollment charter school may receive, were repealed in order to remove outdated provisions. Adopted new 19 TAC §109.1001(g) and (h) clarify, by rating years, the types of financial accountability ratings a school district and an open-enrollment charter school may now receive.

Provisions in subsection (b), relating to lowering a financial accountability rating based on findings of an action, were adopted in new 19 TAC §109.1001(i).

Provisions in subsection (c), relating to the length of the effectiveness of a financial accountability rating, were revised using plain language and adopted in new 19 TAC §109.1001(j).

The adopted repeal of 19 TAC §109.1004, Criteria for Financial Accountability Ratings, removed outdated provisions in subsection (b). Provisions in subsection (a), relating to evaluation and modification of the system and the communication of changes to school districts and open-enrollment charter schools, were adopted in new 19 TAC §109.1001(c).

The adopted repeal of 19 TAC §109.1005, Reporting, clarified, updated, and relocated provisions related to how school districts and open-enrollment charter schools report information and financial accountability ratings to parents, taxpayers, and other stakeholders to adopted new 19 TAC §109.1001(o).

*Adopted New 19 TAC §109.1001*

Adopted new 19 TAC §109.1001, Financial Accountability Ratings, implements the financial accountability rating system, including provisions that would continue or update established practice, as follows.

New subsection (a) includes definitions to describe terminology the TEA uses in the Financial Accountability Rating System rule and determinations. In response to public comment, the TEA added a definition for "debt" at adoption.

New subsections (b) and (c) address provisions relating to the assignment of ratings and the evaluation and modification of the rating system, respectively. No changes were made at adoption.

New subsection (d) includes the types of data sources the TEA uses in calculating the financial accountability indicators for school districts and open-enrollment charter schools. No changes were made at adoption.

New subsections (e) and (f) include uniform indicators that measure the financial management performance and financial solvency of a school district or an open-enrollment charter school. Adopted indicators are assigned a point value to each indicator that will be used in a scoring matrix. The adopted financial accountability rating system does not include an indicator or any other performance measure that requires a school district to spend at least 65 percent or any other specified percentage of district operating funds for instructional purposes or lowers the financial management performance rating of a school district for failure to spend at least 65 percent or any other specified percentage of district operating funds for instructional purposes.

The adopted new financial accountability rating system for each school district or open-enrollment charter school, as applicable, will be assigned a financial accountability rating each rating year. The adopted indicators would be evaluated by the commissioner at least once every three years. Accordingly, the adopted new 19 TAC §109.1001 includes rating worksheets that will be used to measure each school district and open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner. The adopted new rule clarifies that financial accountability ratings for a rating year are based on the data for the prior fiscal year. The adopted new rule also establishes a phase-in of rating indicators by proposing separate worksheets for rating years 2014-2015, 2015-2016, and 2016-2017 and subsequent years.

In response to public comment, each rating worksheet adopted under new subsections (e) and (f) has been updated at adoption to modify and clarify indicators.

In adopted new 19 TAC §109.1001(e) and (f), the title for the rating worksheets and calculations for ratings years 2014-2015, 2015-2016, and 2016-2017 were modified to reflect the month that the rule takes effect. For each worksheet in §109.1001(e), the title was changed from "School FIRST - Rating Worksheet Dated April 2015" to "School FIRST - Rating Worksheet Dated August 2015" for each specific rating year and for each section in §109.1001(f), the title was changed from "Charter FIRST - Rating Worksheet Dated April 2015" to "Charter FIRST - Rating Worksheet Dated August 2015" for each specific rating year. Also, the term "district" was changed to "school district" and "charter" was changed to "charter school" in each indicator where the terms were referenced to be uniform.

In response to public comments, the financial accountability indicators for school districts and charter schools for rating year 2014-2015, which are based on fiscal year 2014 data, in 19 TAC §109.1001(e)(1) and (f)(1), have been modified as follows.

Defining information for an unmodified opinion in Indicator 2 has been placed in parenthesis. For Indicator 3, defining information for a debt default has been placed in parentheses as well as an addition of a definition for a debt agreement to the indicator. A modification was made to the calculation defined for Indicator 4 to exclude pension expense and net pension liability as applicable from a school district's total unrestricted net asset balance determination and to exclude pension expense, Other Post-Employment Benefits (OPEB), and net pension liability as applicable from the total net asset balance determination of a charter school. A notation, "(See ranges below.)," was added to Indicator 5 to reference the administrative cost ratio thresholds for the determination of points. The administrative cost ratio thresholds for Indicator 5 have been also revised. The calculation defined for a charter school's administrative cost ratio was clarified to include funds 199 and 420. Additionally, the wording in Indicator 6 was revised to clarify how the variance between a school district's annual financial report (AFR) and Public Education Information Management System (PEIMS) data is calculated. Also, the wording in Indicator 7 was revised to clarify that the external auditor indicates the instances of material weaknesses in internal controls and to place the defining information for a material weakness in parenthesis.

In response to public comments, the financial accountability indicators for school districts and charter schools for rating years 2015-2016 and 2016-2017, which are based on fiscal year 2015 and 2016 data, respectively, in 19 TAC §109.1001(e)(2), (e)(3), (f)(2), and (f)(3) have been modified as follows.

The wording of Indicator 1 was modified to restore the 30-day grace period for 2015-2016 and beyond. Indicator 2 was modified from its proposed form that allowed a school district or charter school to pass the indicator if it passed either 2.A (unmodified opinion) or 2.B (free of material weaknesses) to require a school district or charter school to pass 2.A to pass the indicator. The wording in Indicator 2 was also revised to clarify that the external auditor indicates the instances of material weaknesses in internal controls. Defining information for an unmodified opinion and a material weakness in Indicator 2 have been placed in parenthesis. For Indicator 3, defining information for a debt default has been placed in parentheses and a definition for a debt agreement was added to the indicator. Defining information for timely payments to various government agencies was added to the calculation definition for Indicator 4.

A modification was made to the calculation defined for Indicator 5 for a school district's total unrestricted net asset balance to exclude pension expense and net pension liability as applicable and to a charter school's net asset balance to exclude pension expense, OPEB, and net pension liability as applicable from the total net asset balance determination. Modifications were also made to Indicators 6, 9, and 10 for school districts to exclude pension expense and net pension liability as applicable from expenditures in the calculations for days of cash on hand, revenues over expenditures, and the debt service coverage ratio. Modifications were also made to Indicators 6, 9, and 10 for charter schools to exclude pension expense, OPEB, and net pension liability as applicable from expenditures in the calculations for days of cash on hand, revenues over expenditures, and the debt service coverage ratio. Additionally for Indicator 10, the calculation

for the debt service coverage ratio for school districts was modified to include the debt service fund balance. The measure for a school district or charter school's long-term solvency in Indicator 8 was amended from the ratio of long-term liabilities to long-term assets to the ratio of long-term liabilities to total assets. The calculation for Indicator 8 was amended to exclude pension expense and net pension liability as applicable for school districts and to exclude pension expense, OPEB, and net pension liability as applicable for charter schools.

Wording was added to Indicators 5 and 8 for the 2015-2016 and 2016-2017 Charter FIRST ratings worksheet to state "New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation change to the 10 percent increase in 5 years." A notation, "(See ranges below.)", was added to Indicators 6, 7, 8, 10, and 11 to reference the thresholds for the determination of points for days of cash on hand, current assets to current liabilities ratio, long-term liabilities to total assets ratio, debt service coverage ratio, and the administrative cost ratio, respectively. The administrative cost ratio thresholds for Indicator 11 have been revised also. The calculation defined for a charter school's administrative cost ratio was clarified to include funds 199 and 420. For Indicator 12, the wording was revised to align with the agency's intent of the point scale for the change in the student to staff ratio. The wording in Indicator 13 was revised to clarify how the variance between a school district or charter school's AFR and their PEIMS data is calculated. Additionally, the wording in Indicator 14 was revised to clarify that the external auditor indicates the instances of material noncompliance and the defining information for a material noncompliance was placed in parenthesis.

The determination of a school district's 2015-2016 School FIRST ratings based on fiscal year 2015 data and a charter school's 2015-2016 Charter FIRST ratings based on fiscal year 2015 data were modified from the proposed scale to allow them to more easily transition to newly adopted financial accountability ratings. For school districts and charter schools, the ratings were modified from a proposed scale for a Superior rating with 90 through 100 points to 70 through 100, from an Above Standard rating with 75 through 89 points to 50 through 69 points, from Meets Standard rating with 50 through 74 points to 31 through 49 points, and from Substandard Achievement rating with 0 through 49 points to 0 through 30 points. Additionally, the criteria for a Substandard Achievement rating was adjusted to require a school district or charter school to pass Indicator 2.A, so a school district or charter school receives a Substandard Achievement rating if it scores below the minimum passing score, if it failed any critical indicator 1, 3, 4, 5, or 2.A, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.

New subsections (g) and (h) clarify, by rating years, the types of financial accountability ratings a school district and an open-enrollment charter school may receive. No changes were made at adoption.

New subsection (i) addresses the lowering of a financial accountability rating based on findings of an action. No changes were made at adoption.

New subsection (j) addresses the length of the effectiveness of a financial accountability rating. No changes were made at adoption.

Subsection (k) specifies that each district or open-enrollment charter school will receive a preliminary rating before receiving a final rating. In accordance with the TEC, §39.082(i), the financial accountability rating of each school district and open-enrollment charter school under the adopted new financial accountability rating system will be made publicly available by August 8 of each year. At adoption, the TEA added clarification in subsection (k)(1) that the F rating is substandard achievement for failing to meet the statutory deadline for submitting the AFR.

Subsection (l) addresses the process for a school district or an open-enrollment charter school to appeal a preliminary rating. Errors by a district or an open-enrollment charter school in recording data or submitting data through the TEA data collection and reporting system will be reviewed, but are disfavored due to the need to have the accountability system applied uniformly. Consideration will be given only to appeals that would result in a change of the preliminary rating. The appeal and additional information to support the appeal must be submitted by a district or open-enrollment charter school to the TEA no later than 30 days after the release of the preliminary ratings. The TEA will issue the final rating no later than 60 days after receiving the appeal. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered. If TEA does not receive an appeal of a preliminary rating, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating. An external review panel will independently review and submit his or her recommendation to the TEA division responsible for financial accountability after reviewing the appeal and additional supporting information. The commissioner will make the final financial accountability ratings decision.

The following changes were made to subsection (l) at adoption in response to comment.

Subsection (l)(1) was modified to clarify that an appeal must include "adequate evidence and additional information" supporting a school district or an open-enrollment charter school's appeal. This amendment was made to eliminate confusion as to whether the rule was implementing a legal standard.

Subsections (l)(2) and (3) were modified to permit a school district to submit an appeal of any issue that results in a failing preliminary FIRST rating. Subsection (l)(3) specifies, however, that the system must be uniformly implemented so an appeal based upon evidence of a data submission error by a district or charter school is unlikely to negate concerns raised by an indicator. Subsection (l)(3) was also modified to include language asserting that the appeals process is not for correcting data that has been incorrectly submitted to the TEA by a district or charter school and to clarify that a request for exception to application of an accountability rule made during the appeals process is disfavored and likely to be denied.

Subsection (m) establishes that a final rating issued by the TEA may not be appealed. No changes were made at adoption.

Subsection (n) addresses the local option of a financial accountability rating by a voluntary association. No changes were made at adoption.

Subsection (o) establishes provisions related to how school districts and open-enrollment charter schools report information and financial accountability ratings to parents, taxpayers, and other stakeholders. No changes were made at adoption.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 22, 2015, and ended June 22, 2015, and included a public hearing that was held on June 17, 2015. Following is a summary of public comments received, including those received at the public hearing, and corresponding agency responses regarding the proposed repeal of and new 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability, Division 1, Financial Accountability Rating System.

A number of individuals, including school officials, a member of the State Board of Education, and representatives of regional education service centers and other interested organizations, submitted comments and inquiries regarding the Financial Accountability Rating System known as the Financial Integrity Rating System of Texas (FIRST) for school districts and open-enrollment charter schools.

#### ANNUAL FINANCIAL REPORT SUBMISSION

(INDICATOR 1 for 2014-2015, 2015-2016, and 2016-2017 Rating Years)

Comment: A school official from Clear Creek Independent School District (ISD) asked if the financial accountability rating system could remain unchanged for 2014-2015 and if there could be a 10-day grace period added for the submission of the annual financial and compliance report (AFR) to allow for signatures and uploading the document.

Comment: A representative of Fredericksburg ISD commented that the note for the no 30-day grace period should be in quotes since it is not part of the indicator question and that the proposed indicators should not be effective until the 2016-2017 rating year due to the timing of the release of the proposed indicators for rating years 2014-2015 and 2015-2016.

Comment: A representative from Texans for Quality Public Charter Schools expressed support for the decision to maintain a grace period for submission of the AFR.

Comment: A representative from the Texas Charter Schools Association (TCSA) requested that TEA clarify whether the 30-day grace period remains and provide guidance relating to untimely audits caused by TEA's directive to the school to change its audit firm.

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the proposed Indicator 1 does not consider the possibility that a school may, through no fault of its own, fail to file its AFR timely. The law firm suggested adding a clause to Indicator 1 that allows a charter school to not be penalized for this indicator if the independent auditor failed to timely complete the annual audit and the charter school provides documentary evidence of the independent auditor's failure to complete the audit and related AFR.

Agency Response: The agency agrees and has modified the indicator to maintain the 30-day grace period.

#### DEFAULT ON DEBT

(INDICATOR 3 for 2014-2015, 2015-2016, and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), and Figure: 19 TAC §109.1001(e)(3), the assistant superintendent for business and finance from Fredericksburg ISD commented

that, for Indicator 3, only the first sentence is the indicator and the rest is an explanation that should be in parenthesis or the language should be revised.

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(1), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3), a representative of Aristoi Classical Academy commented that Aristoi Classical Academy approves of the proposed language for Indicator 3.

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(1), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3), a representative of TCSA proposed exemption of payment plans and technical defaults and subsequently commented that its proposal provides needed clarity for Indicator 3. The TCSA, however, recommended that the Texas Education Agency (TEA) consider adding a definition for debt agreement(s) to the language of Indicator 3.

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the TEA would conclude that a charter school failed the proposed Indicator 3 if, subsequent to a default but prior to the conclusion of the fiscal year, a charter school negotiated a forbearance or payment plan with a lender and made timely payments to the lender pursuant to the agreed-upon payment schedule. The law firm also suggested adding wording to this indicator to emphasize the year being rated and the following wording regarding debt agreements: "For purposes of determining a charter school's financial performance under this indicator, debt agreements do not include amounts owed to the U.S. Internal Revenue Service, U.S. Social Security Administration, Teacher Retirement System of Texas, Texas Workforce Commission, or any other state or federal government agency."

Agency Response: The agency agrees with the suggestions to add parenthesis to explanatory sentences and to add clarity and has modified Indicator 3 by adding parenthesis to the explanatory sentences and adding a definition of debt agreement to the language of Indicator 3. Indicator 3 has been modified to read: "Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a new plan for paying back the debt.)" This modification was made to Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), 19 TAC §109.1001(f)(1), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3).

The agency disagrees with the statement on how the agency would conclude a charter school's outcome for this debt default measure. The proposed indicator asks if the charter school was in compliance with the payment terms of all debt agreements at fiscal year end. Therefore, the agency concludes that a charter school with a debt default in a given fiscal year that negotiates a payment agreement in that same fiscal year and is current on the payment terms of that agreement at the end of that same fiscal year does not fail the proposed Indicator 3 for ratings based on data for that fiscal year. The agency appreciates the suggested wording for this indicator. However, the agency has de-

terminated that the failure of a charter school to make timely payments on agreements related to debts owed to the U.S. Internal Revenue Service, U.S. Social Security Administration, Teacher Retirement System of Texas, Texas Workforce Commission, or any other state or federal agency for delinquent payments is an indicator of financial instability, and the agency will not exclude amounts owed to such entities when evaluating this indicator.

#### TIMELY PAYMENTS TO TRS, TWC, AND IRS

(INDICATOR 4 for 2015-2016 and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3), representatives with Austin ISD, Texans for Quality Public Charter Schools, and TCSA commented that the language for Indicator 4 should be more specific as to the reason why a school district or charter school may be unable to make timely payments, because Indicator 4 appears to be extremely stringent and there are no allowances for occasional human or technological errors. The commenters also stated that the TEA should consider revising the language of Indicator 4 by replacing "timely payments" with "current payments" and adding a definition for "timely" in the language of Indicator 4.

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the agency's use of the term "timely" raises questions as to the source of the data to be used to calculate Indicator 4 (under 19 TAC §109.1001(f)(2) and (f)(3)). The law firm also suggested adding the following wording to this indicator: "For purposes of calculating this indicator, 'timely' shall be construed to mean the satisfactory resolution of a warrant hold, levy or lien or other similar administrative or judicial garnishment within 30 calendar days."

Agency Response: The agency disagrees that the words "timely payments" should be replaced with "current payments." A district or charter school is current on payments if the payments that are due are paid on time and in accordance with the applicable laws, rules, and regulations set forth by the aforementioned entities. The agency will use warrant holds as reported to the TEA by the Texas Comptroller of Public Accounts in its determination of whether districts and charter schools made timely payments to TRS and TWC. For this indicator, a district or charter school will be considered to have timely payments to TRS and TWC if it had no holds on payments that were not cleared within 30 days as a result of untimely payments to TRS or TWC. In regard to the IRS, the agency will use the AFR, warrant holds, and any notifications from the IRS as a basis for information related to timely payments to the IRS. The agency will not make the suggested change to Indicator 4; however, the agency will add clarification on the determination of timely payments to Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3).

#### NET ASSET BALANCE

(INDICATOR 4 for 2014-2015 Rating Year and INDICATOR 5 for 2015-2016 and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(1), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3), a representative with NTP Enterprises, LLC commented that the equation for Indicator 4, for the 2014-2015 rating year, and Indicator 5, for the 2015-2016 and 2016-2017 rating years, discloses a variable of "E"; however,

there is no description for the variable "E" disclosed in the language for the aforementioned indicator.

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), and Figure: 19 TAC §109.1001(e)(3), representatives from Keller ISD and the TCSA commented that Indicator 4 for the 2014-2015 rating year and Indicator 5 for the 2015-2016 and 2016-2017 rating years require the total unrestricted net asset balance to be greater than zero (\$0) and this may indicate that there is equity on the balance sheet. In addition, the commenter stated that many fast-growth districts will have a negative total net asset balance, because "...the debt is still cash and has not been expended on buildings - long-term assets." In addition, TCSA stated, "this indicator allows charter schools that grow by more than 10 percent (10%) over a 5-year period to pass and this is a good change. However, this indicator should acknowledge the reality that new charter schools must take on debt as part of the start-up process; and a new charter school should receive an exemption from this indicator. Or, TEA should allow any charter school that has an increase in students in membership by more than 10 percent (10%) over any span of years to pass this indicator."

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the proposed total net asset indicator (Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's 5 year percent change in students in membership was a 10 percent increase or more, then the charter school passes this indicator)) does not take into consideration the conflicting financial and economic practicality of starting a charter school, particularly the acquisition of a school facility through debt financing that is an integral component of a multi-year strategic plan. The law firm suggested a charter school automatically pass this indicator if it is within the first three years of opening, does not experience a decline in student enrollment, and discloses a decline in any deficit in net assets.

Comment: A representative of the Excel Academy Charter School commented that the charter holder for Excel Academy is the Harris County Juvenile Board, which is a governmental entity. The commenter stated that as a governmental entity, the annual financial audit report for the Juvenile Board's Excel Academy uses the governmental reporting model of the Governmental Accounting Standards Board (GASB) statement 45 that requires the board to report an expense and a liability for Other Post-Employment Benefits (OPEB) in the government-wide financial statements. The commenter explained that to receive an unmodified opinion in the presentation of its financial statements, Excel Academy must report an OPEB liability and expense in the government-wide financial statements as the GASB requires. The commenter went on to state that, on the contrary, Texas independent school districts do not report an OPEB liability or OPEB expense. The commenter stated that since pension expense, net pension liability (NPL), OPEB expense, and OPEB liability are similarly prepared estimates and GASB mandated, the OPEB liability and NPL should both be excluded from a school's long-term liabilities in the government-wide financial statements with regard to Indicators 5 and 8. Additionally, the OPEB expense should be excluded from a school's expenses in the government-wide financial statements with regard to Indicators 6 and 9. The commenter recommended revising proposed Indicators 6 and 9 to exclude OPEB expense and revising proposed Indicators 5 and 8 to exclude any OPEB liability and NPL.

Agency Response: The agency provides the following clarification and modification of the language for Indicator 4 for the 2014-2015 rating year and Indicator 5 for the 2015-2016 and 2016-2017 rating years for Charter FIRST. The equations in Figure: 19 TAC §109.1001(f)(1), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3) for Indicator 4 for the 2014-2015 rating year and Indicator 5 for the 2015-2016 and 2016-2017 rating years have been modified to:  $A + B > C$  or  $((D - E) / E) * 100 \geq F$ , where

A = Total net asset balance in the statement of financial position in the annual financial report;

B = Pension Expense, Other Post-Employment Benefits (OPEB) and Net Pension Liability (NPL), as applicable;

C = Net assets threshold, which = 0;

D = Number of students in membership in year 5 from base year;

E = Number of students in membership in base year;

F = Threshold for percent change in students in membership, which = 10%

The agency agrees on the need for addressing concerns of fast-growth school districts and start-up charter school operations. The agency has revised the indicator so that a district or charter school must either have a total unrestricted net asset or total net asset balance greater than zero or an increase of 10% or more in students in membership over the past 5 years in order to pass this indicator. New charters that have a negative net asset balance will pass this indicator if they have a 10% growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the growth computation for charter schools will be based on enrollment growth over the previous five years.

#### ADMINISTRATIVE COST RATIO

(INDICATOR 5 for 2014-2015 Rating Year and INDICATOR 11 for 2015-2016 and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), and Figure: 19 TAC §109.1001(e)(3), the assistant superintendent for business and finance from Fredericksburg ISD commented that Indicator 5 states the threshold ratio, but does not disclose a notation or symbol to look below to view the threshold ranges in the language of Indicator 5. In addition, the commenter stated that the table that contains the administrative cost threshold ranges is not labeled very well.

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), and Figure: 19 TAC §109.1001(e)(3), representatives of Mount Pleasant ISD and Meyer Park Elementary commented that the proposed administrative cost ratio threshold ranges for Indicator 5 for the 2014-2015 rating year and Indicator 11 for the 2015-2016 and 2016-2017 rating years are being imposed after the budget was prepared and audited Public Education Information and Management (PEIMS) data and other required TEA filings have been made. The commenters stated that it is therefore unreasonable to impose the administrative threshold ranges upon school districts and charter schools. The commenters further stated that school districts and charter schools would have taken the necessary steps to meet the requirements set forth in the newly proposed FIRST rules if they had been aware of the new administrative cost threshold ranges before the 2013-2014 school year began. In addition, one

of the commenters stated that the earliest date that the new administrative cost threshold ranges should be made effective is for the 2016-2017 School FIRST and Charter FIRST rating year; this would allow school districts and charter schools enough time to implement changes to meet the administrative cost ratio threshold requirements.

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(1), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3), a representative with NTP Enterprises, LLC commented that Indicator 5 for the 2014-2015 rating year and Indicator 11 for the 2015-2016 and 2016-2017 rating years contains an asterisk noting that the object codes 61XX-64XX in fund code 420 are included in the administrative cost ratio calculation and object code 6144 is excluded. The commenter further stated that object code 6144 is not required for reporting purposes for charter schools and asked if object code 6144 was the intended object code to be exempted or should another object code be referenced in the language of Indicator 5.

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), and Figure: 19 TAC §109.1001(e)(3), representatives of Dallas ISD, Meyer Park Elementary, and the TCSA commented that the newly proposed administrative cost ratio threshold ranges for Indicator 5 for the 2014-2015 rating year and Indicator 11 for the 2015-2016 and 2016-2017 rating years have been decreased significantly compared to the administrative cost ratio threshold ranges that are currently in effect for School FIRST and Charter FIRST. The representative of Dallas ISD asked why the administrative cost threshold ranges have been changed. In addition, the commenter recommended that the agency not repeal the administrative cost ratio threshold ranges that were used for the 2013-2014 School FIRST rating year, but retain the administrative cost ratio thresholds used for the 2013-2014 School FIRST rating year and apply the administrative cost ratio threshold ranges used in the 2013-2014 School FIRST rating year to the 2014-2015 School FIRST rating year ratings. Also, TCSA requested that the newly proposed administrative cost ratio scale be revised by excluding the point scale and expenses for OPEB and NPL from the calculation, revising the point scale, and redefining instructional costs to include federal instructional expenses.

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), and Figure: 19 TAC §109.1001(e)(3), a representative of Wylie ISD commented that the agency should review the newly proposed administrative cost ratio threshold ranges contained in Indicator 5 for the 2014-2015 rating year and Indicator 11 for the 2015-2016 and 2016-2017 rating years and consider adding a cost of living adjustment (COLA) to the administrative cost ratio threshold ranges.

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), and Figure: 19 TAC §109.1001(e)(3), the assistant superintendent for business and finance from Fredericksburg ISD commented on Indicator 11 by asking why the administrative cost ratio changed so drastically. The commenter further stated that the administrative cost ratio is about half of what it was and that the proposed administrative cost ratios intentionally make it look like schools are spending too much on administrative costs.

Comment: A representative from KIPP Houston suggested that the agency include all federal funds in the administrative cost ratio calculation. The representative further stated that federal

funds are a large component of their organization because they focus on special populations such as Title I students and a significant part of function 11 dollars are allocated to federal funds.

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented that using an administrative cost ratio to evaluate financial performance appears to be an attempt to circumvent a statutory prohibition and then cited TEC, §39.082(c), relating to the prohibition of including an indicator about expending at least 65% or any other specified percentage of district operating funds for instructional purposes. The law firm also stated that TEA appears to nonetheless require charter schools to expend a specified amount of funds for instructional purposes by attempting to limit the amount expended on administrative expenses and suggested the indicator be removed. The law firm also suggested that TEA consider ratios for each point level that are realistically attainable given the current operating environment of a typical charter school.

Agency Response: The agency agrees with the comment to add a reference to the administrative cost ratio threshold ranges for the administrative cost ratio indicator and has modified the language by adding an additional sentence. Indicator 5 for the 2014-2015 rating year and Indicator 11 for the 2015-2016 and 2016-2017 ratings years for districts and charter schools have been modified to include the following language following the indicator: "(See ranges below.)"

The agency disagrees that the newly proposed administrative cost ratios should be postponed until the 2016-2017 rating year. The administrative cost ratios have not been revised since 2006. The agency reviewed and updated the administrative cost ratio computations to reflect current expenditure patterns of districts and charter schools. However, the agency agrees that the originally proposed administrative cost ratios created a more stringent standard than the administrative cost ratios previously in effect; therefore, the agency has modified the newly proposed administrative cost ratio thresholds. While the administrative cost ratio indicator used in prior years provided a maximum of five points, the new indicator provides a maximum of ten points. Districts that met the criteria to generate five points under the previous indicator will now be able to generate eight points for the same performance. Separate thresholds have been established for charter schools in recognition of their unique operating circumstances.

The agency also disagrees that OPEB and NPL expenses should be excluded from the administrative ratio cost calculation because the agency does not collect the data by function codes that specifically separates OPEB and NPL expenses from the expenses used in the administrative cost calculation. The agency will continue to exclude federal instructional expenses from the administrative cost ratio calculation because federal funds are not used to pay for direct administrative expenses.

The agency intended to exclude object code 6144 from the administrative cost ratio calculation for districts; however, object code 6144 is not applicable to charter schools. The agency agrees that object code 6144 should not be included in the Charter FIRST calculation of the administrative cost ratio. The agency has modified at adoption the language for Charter FIRST for Indicator 5 for the 2014-2015 rating year and Indicator 11 for the 2015-2016 and 2016-2017 rating years. These modifications are reflected in 19 TAC §109.1001(f)(1), Figure 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3).

The language is modified at adoption to state: "Was the charter school's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)  $(A/B) < \text{Threshold based on CS size, where}$

A = Sum of amounts for function codes 21 and 41;

B = Sum of amounts for function codes 11, 12, 13, and 31

\*Includes object codes 61XX-64XX in fund codes 199 and 420

The agency disagrees that the newly proposed administrative cost ratio threshold ranges should include a COLA as there are no provisions in statute related to funding or financial accountability that reflect such adjustments. However, the agency does understand that the cost of goods and services increases over time, and the agency has modified the administrative cost ratio ranges and modified the thresholds.

The agency disagrees with the comments that using an administrative cost ratio to evaluate financial performance attempts to circumvent TEC, §39.082 (c), and disagrees that the administrative cost ratio indicator be removed from the proposed methodology. The proposed financial accountability rating system does not include an indicator or any other performance measure that directly requires a district or charter school to spend at least 65% or any other specified percentage of district operating funds for instructional purposes nor does it lower the financial management performance rating of a district or charter school for failure to spend at least 65% or any other specified percentage of district operating funds for instructional purposes. The administrative cost ratio is the ratio of administrative costs to instructional costs. The number of points received for the administrative cost ratio indicator is attributable to the percentage or ratio of administrative costs as compared to instructional costs. FIRST does not require a certain percentage of funds to be spent on instructional purposes.

#### PEIMS TO AFR DATA COMPARISON

(INDICATOR 6 for 2014-2015 Rating Year and INDICATOR 13 for 2015-2016 and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), and Figure: 19 TAC §109.1001(e)(3), the assistant superintendent for business and finance from Fredericksburg ISD asked if the 3% of all expenditures meant all funds.

Comment: Representatives from the Texas Classroom Teachers Association (TCTA) noted that the term "aggregate" instead of "absolute" is used in the data quality indicator and suggested that the term "absolute" be substituted for "aggregate" to improve the strength of the indicator.

Agency Response: The agency disagrees with the commenter's recommendation to use the term "aggregate." The agency uses the term absolute to define the calculation for the data quality indicator. The term "absolute" is referenced in the calculation. For districts, "3% of all expenditures" refers to three percent of expenditures in fund code 199. For charter schools, the language refers to all funds. The agency, however, has added clarifying language to Indicator 6 for the 2014-2015 rating year and Indicator 13 for the 2015-2016 and 2016-2017 rating years. This indicator has been modified at adoption to state: "Did the comparison of Public Education Information Management System (PEIMS) data to like information in the district's (or charter school's) AFR result in a total variance of less than 3 percent of all expenditures (or expenses) by function?" This modification



was made in Figure: 19 TAC §109.1001(f)(1), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3) for charter schools and in Figure: 19 TAC §109.1001(e)(1), Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3) for school districts.

#### DAYS OF CASH ON HAND

(INDICATOR 6 for 2015-2016 and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(2) and Figure: 19 TAC §109.1001(f)(3), a representative with NTP Enterprises, LLC commented on Indicator 6 by asking if the amortization, known as a non-cash expense, would be subtracted from the charter schools total expenses by subtracting object codes 6524 and 6525 from the charter school's total expenses, since the formula for Indicator 6 subtracts the depreciation expense, Object Code 6449, from the charter school's total expenses. In addition, a representative from Keller ISD stated, "the Days Cash on Hand calculation is used to examine corporate financial statements and has little application in Texas school business."

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(2) and Figure: 19 TAC §109.1001(f)(3), representatives from Texans for Quality Public Charter Schools urged TEA to consider allowing pending receivables from the state and federal governments to count toward cash on hand because they feel that the timing of their annual cash on hand calculation for purposes of Charter FIRST will not line up with the timing of some payments from the Foundation School Program (FSP).

Comment: A representative of KIPP Houston asked the agency to allow the accounts receivable balances associated with federal and state receivable in the days of cash on hand measure because charter schools cannot control when they will receive cash from TEA.

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(3), a representative with NTP Enterprises, LLC commented that the equation for Indicator 6 for the 2016-2017 rating year does not disclose a variable of "E"; however, there is a description for the variable "E" disclosed in the language of Indicator 6.

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(2) and Figure: 19 TAC §109.1001(f)(3), a representative with the TCSA commented that the TEA should exclude operating expenses for shared services arrangements (SSA) that are recorded by charter schools that act as the fiscal agent for the SSA.

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the thresholds established for days of cash on hand and current investments by TEA may not be realistically attainable for charter schools and suggested that the agency consider a more realistic and attainable goal. The law firm suggested a range from 10 points for greater than or equal to 45 days of cash on hand to zero points for less than 20 days of cash on hand for charter schools.

Comment: A representative of the Excel Academy Charter School commented that the charter holder for Excel Academy is the Harris County Juvenile Board, which is a governmental entity. The commenter stated that as a governmental entity, the annual financial audit report for the Juvenile Board's Excel Academy uses the governmental reporting model of the Governmental Accounting Standards Board (GASB) statement

45 that requires the board to report an expense and a liability for Other Post-Employment Benefits (OPEB) in the government-wide financial statements. The commenter explained that to receive an unmodified opinion in the presentation of its financial statements, Excel Academy must report an OPEB liability and expense in the government-wide financial statements as the GASB requires. The commenter went on to state that, on the contrary, Texas independent school districts do not report an OPEB liability or OPEB expense. The commenter stated that since pension expense, net pension liability (NPL), OPEB expense, and OPEB liability are similarly prepared estimates and GASB mandated, the OPEB liability and NPL should both be excluded from a school's long-term liabilities in the government-wide financial statements with regard to Indicators 5 and 8. Additionally, the OPEB expense should be excluded from a school's expenses in the government-wide financial statements with regard to Indicators 6 and 9. The commenter recommended revising proposed Indicators 6 and 9 to exclude OPEB expense and revising proposed Indicators 5 and 8 to exclude any OPEB liability and NPL.

Agency Response: The agency disagrees that amortization should be excluded from the calculation of the days of cash on hand. The agency has determined that amortization will not be excluded from the total expenses because the agency does not have reliable data and a way to consistently pull the data so that the exclusion of amortization is applied uniformly to all districts and charter schools. In addition, the agency disagrees that the days of cash on hand calculation is only applicable to the corporate arena. This measure is routinely used by ratings firms and the banking industry when assessing the financial solvency and stability of an organization. The days of cash on hand formula allows the agency to determine with a reasonable degree of certainty that the district or charter school is maintaining sufficient cash on hand to pay the district's or charter school's short-term expenditures or expenses as they come due. The agency has decided to modify the equation for Indicator 6 by excluding OPEB and pension expenses from the equation. The language for Indicator 6 has been modified at adoption as reflected in Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3).

The agency disagrees that pending receivables from the state of Texas and other federal governmental agencies should be included in the calculation of the days of cash on hand. The Charter FIRST and School FIRST ratings use audited data from the AFR, PEIMS, and other required TEA reports that charter schools and districts must submit to TEA. Including pending receivables in the calculation may not yield an accurate Charter FIRST or School FIRST rating because the amount that is pending to be paid by the state of Texas and other federal governments may be increased, decreased, or not paid at all. To ensure that the agency is using reliable and audited data, the agency has determined that pending receivables will not be included in the days of cash on hand calculation and will not make that suggested change to Indicator 6, Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3).

The agency appreciates the commenter's suggested days of cash on hand point scale for charter schools, but the agency decided that the proposed point scale will remain. The agency has determined that 60 days of cash on hand for the maximum number of points on this indicator is a reasonable target.

The agency agrees on the need to define the variable "E" and provides the following clarification and modification of the language of Indicator 6, Figure: 19 TAC §109.1001(f)(2) and §109.1001(f)(3). The equation for Indicator 6 for the 2015-2016 and 2016-2017 rating years has been modified at adoption to state:  $[(A+B)/(C-D-E)] * 365$ , where

A = Cash and Equivalents;

B = Current Investments;

C = Total Expenditures;

D = Depreciation Expense;

E = Pension Expense, OPEB, and NPL, as applicable

The agency agrees that the operating expenses of a charter school that acts as the fiscal agent for an SSA should be excluded from the total expenses of the charter school that acts as the fiscal agent. The agency will exclude the expenses of the SSA member schools from the fiscal agent's expenses.

#### MATERIAL WEAKNESSES

(INDICATOR 7 for 2014-2015 Rating Year)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(1) and Figure: 19 TAC §109.1001(f)(1), the assistant superintendent for business and finance from Fredericksburg ISD and the TCSA commented that Indicator 7 should be reworded and restructured to state: "Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds as defined by the AICPA?"

Agency Response: The agency agrees and has modified the language of Indicator 7 at adoption to state: "Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)" This modification was made to Figure: 19 TAC §109.1001(e)(1) and Figure: 19 TAC §109.1001(f)(1).

#### CURRENT ASSETS TO CURRENT LIABILITIES

(INDICATOR 7 for 2015-2016 and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3), representatives with the TCSA and Texans for Quality Public Charter Schools commented that Indicator 7 should exclude balloon payments from the calculation, that the indicator should be reworded, and that the phrase "to cover short-term debt" seems superfluous.

Comment: A representative from KIPP Houston commented that, "Indicator 7 has a possible issue, especially for short term loans, like construction loans, and for balloon indebtedness coming due in a year which will be refinanced...the current 'asset' in this case would be an impending refinancing that wouldn't show up on this balance sheet calculation." The representative suggested that the calculation exclude loans that are to be refinanced in the current year from being counted as a current liability.

Agency Response: The agency disagrees that balloon notes should be excluded from the calculation of current assets to current liabilities in Indicator 7. The charter school has at its own

discretion the right to make the decision to refinance any balloon notes that the charter school is responsible for payment of. In addition, the charter school is responsible for making sound fiscal decisions for the charter school and carrying numerous balloon notes may cause the charter school to become insolvent. Also, the agency disagrees that the language for Indicator 7 should be revised and that the phrase "to cover short-term debt" is superfluous. The language for Indicator 7 is clear and direct and the intent is to determine if the charter school or district has enough current assets to cover the charter school's or district's short-term debts. The agency has determined that balloon notes will not be excluded from the equation for Indicator 7 and will not make the suggested change.

#### LONG-TERM LIABILITIES TO LONG-TERM ASSETS

(INDICATOR 8 for 2015-2016 and 2016-2017 Rating Years)

Comment: A school official from McKinney ISD suggested that the ratio of interest to principal be used to identify a district's long-term solvency for Indicator 8 (Was the measure of long-term liabilities to long-term asset ratio for the district sufficient to support long-term solvency?) instead of the ratio of long-term liabilities to long-term assets. The commenter stated that fast-growth districts will all receive very low points for the ratio of long-term liabilities to long-term assets because relatively new assets will be offset with relatively new liabilities.

Comment: A school official from Plano ISD disagreed with using the proposed Indicator 8 for the 2015-2016 School FIRST Ratings based on FY 2015 data and the 2016-2017 School FIRST Ratings based on FY 2016 data. The school official suggested that the ratio of future payments to current principal outstanding is a better indicator to determine long-term solvency than the ratio of long-term liabilities to long-term assets.

Comment: A school official from Frisco ISD asked that the agency amend the language in Indicator 8 to include an exception for fast-growth districts.

Comment: A representative of Dallas ISD recommended that the agency add the following conditions to Indicator 8: "If the DCC 3200 (Net Investment in Capital Assets) is positive, then the LEA automatically passes. Or, if the I&S tax rate is below 50 cents, then the LEA automatically passes."

Comment: A representative of Austin ISD commented that it seems excessive that the only way a district can achieve the highest score on Indicator 8 is to have long-term assets nearly double its long-term liabilities and that many districts have to rely on local taxpayer-approved bond referendums to support capital improvements because the state has a propensity for underfunding both maintenance and operations (M&O) collections and facilities.

Comment: A representative of Keller ISD suggested that the relationship between bonded debt and taxable appraised value is a better comparison than long-term liabilities to long-term assets because the appraised values, not buildings, generate cash flow through the interest & sinking fund tax rate.

Comment: Representatives of Texans for Quality Public Charter Schools stated that the long-term liabilities to long-term assets metric, as proposed, ignores cash balances and other short-term assets, including state and federal receivables, as a resource to meet long-term requirements. The representatives recommended that the agency consider excluding Indicator 8 until a more suitable alternative considering loan funds (short-term assets) and loan balances (long-term liabilities) is produced, for

instance, a formula that allows bond funds to be recognized as long-term assets.

Comment: A representative of the TCSA suggested that the agency adjust the point structure for Indicator 8 because it punishes reasonable growth and sacrifices instructional supports in the classroom and excludes OPEB and NPL from the calculation as they apply to government charter schools.

Comment: A representative of KIPP Houston commented that Indicator 8 is a redundant and unnecessary test because long-term viability is already measured by Indicators 5 and 10. The representative stated that the underlying assumption is that charters are going to extinguish debt with long-term assets, which is not the case.

Comment: A representative of the Excel Academy Charter School commented that the charter holder for Excel Academy is the Harris County Juvenile Board, which is a governmental entity. The commenter stated that as a governmental entity, the annual financial audit report for the Juvenile Board's Excel Academy uses the governmental reporting model of the Governmental Accounting Standards Board (GASB) statement 45 that requires the board to report an expense and a liability for Other Post-Employment Benefits (OPEB) in the government-wide financial statements. The commenter explained that to receive an unmodified opinion in the presentation of its financial statements, Excel Academy must report an OPEB liability and expense in the government-wide financial statements as the GASB requires. The commenter went on to state that, on the contrary, Texas independent school districts do not report an OPEB liability or OPEB expense. The commenter stated that since pension expense, net pension liability (NPL), OPEB expense, and OPEB liability are similarly prepared estimates and GASB mandated, the OPEB liability and NPL should both be excluded from a school's long-term liabilities in the government-wide financial statements with regard to Indicators 5 and 8. Additionally, the OPEB expense should be excluded from a school's expenses in the government-wide financial statements with regard to Indicators 6 and 9. The commenter recommended revising proposed Indicators 6 and 9 to exclude OPEB expense and revising proposed Indicators 5 and 8 to exclude any OPEB liability and NPL.

Agency Response: The agency appreciates the suggestions to amend the measure of long-term solvency from the long-term liabilities to long-term assets for Indicator 8. The agency agrees that some districts and charter schools may receive low points on this indicator, primarily during the earlier periods of the debt payment term. Therefore, the agency will use the ratio of long-term liabilities to total assets to measure a district or charter school's ability to meet its financial requirements and has modified the calculation for Indicator 8 in Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3) to reflect long-term liabilities divided by total assets. Additionally, the agency also added language to the indicator that allows districts and charter schools that have experienced a 10% increase or more over the past five years to pass this indicator. The agency has also excluded NPL and OPEB for districts and governmental charter schools, as applicable. The ratio of long-term liabilities to total assets will measure the percentage of a district or charter school's assets that have been financed with debt and a decrease in this ratio over years should indicate that a district or charter school is becoming less dependent on debt for its operations.

## EXPENDITURE ANALYSIS

(INDICATOR 9 for 2015-2016 and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(2), the assistant superintendent for business and finance from Fredericksburg ISD asked if Indicator 9 should be operating expenditures and if Indicator 9 is only operating expenditures, the parentheses that encloses facilities and construction should be removed from the equation and the Chapter 41 recapture payments should be excluded.

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(2) and Figure: 19 TAC §109.1001(e)(3), a representative from Keller ISD commented on Indicator 9 by stating "this indicator wants a district not to deficit spend--that is revenues should exceed expenses." The representative further stated that Keller ISD has accumulated excess reserves and is in a position to spend down those excess reserves in fund balance and that Keller ISD and like districts would be penalized for being prudent in the past.

Comment: Concerning proposed Figure: 19 TAC §109.1001(f)(2) and Figure: 19 TAC §109.1001(f)(3), a representative from the TCSA commented on Indicator 9 by stating that the equation should be revised to include annual philanthropic receivables, an exclusion otherwise prohibited by the Financial Accounting Standards Board (FASB) Statement No. 116, and that TEA should exclude any OPEB expenses.

Comment: A representative of the Excel Academy Charter School commented that the charter holder for Excel Academy is the Harris County Juvenile Board, which is a governmental entity. The commenter stated that as a governmental entity, the annual financial audit report for the Juvenile Board's Excel Academy uses the governmental reporting model of the Governmental Accounting Standards Board (GASB) statement 45 that requires the board to report an expense and a liability for Other Post-Employment Benefits (OPEB) in the government-wide financial statements. The commenter explained that to receive an unmodified opinion in the presentation of its financial statements, Excel Academy must report an OPEB liability and expense in the government-wide financial statements as the GASB requires. The commenter went on to state that, on the contrary, Texas independent school districts do not report an OPEB liability or OPEB expense. The commenter stated that since pension expense, net pension liability (NPL), OPEB expense, and OPEB liability are similarly prepared estimates and GASB mandated, the OPEB liability and NPL should both be excluded from a school's long-term liabilities in the government-wide financial statements with regard to Indicators 5 and 8. Additionally, the OPEB expense should be excluded from a school's expenses in the government-wide financial statements with regard to Indicators 6 and 9. The commenter recommended revising proposed Indicators 6 and 9 to exclude OPEB expense and revising proposed Indicators 5 and 8 to exclude any OPEB liability and NPL.

Agency Response: The agency disagrees that the parentheses should be removed from the equation. The formula for Indicator 9 uses expenditures in the general fund; function codes 11 through 99 and expenditure object code series 6100 through 6400. The parentheses that enclose the numbers in the denominator have been placed in the equation to show the order of operation. In addition, the agency has determined that the Chapter 41 recapture payments will not be excluded from the expenditure analysis calculation. The calculation for this indicator

includes total revenues, which include the local tax collections. Therefore, expenditures for Chapter 41 recapture payments will remain in the calculation.

The agency provides the following clarification concerning FASB Statement No. 116. According to FASB Statement No. 116, "Contributions, including unconditional promise, should be recognized as revenues in the period received. For the purpose of the Statement of Financial Position, contributions should be recorded as increases in assets or decreases in liabilities and as either restricted support or unrestricted revenue." Therefore, if the philanthropic contribution is recognized as revenues in the period received, then the philanthropic donation will be counted in the total revenues of the charter school. The availability of philanthropic funds that have not been contributed to the charter school will not be considered in the evaluation of this indicator.

The agency agrees that OPEB expenses should be excluded from the calculation of Indicator 9; therefore, the agency has modified the language at adoption to exclude OPEB expense. The language has been modified at adoption for Indicator 9, as reflected in Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3).

## DEBT SERVICE COVERAGE RATIO

(INDICATOR 10 for 2015-2016 and 2016-2017 Rating Years)

Comment: A school official from Raymondville ISD recommended that the agency include fund 599 (Debt Service Funds) revenues and expenditures from non-major governmental funds to calculate the debt service coverage ratio for Indicator 10 (Was the debt service coverage ratio sufficient to meet the required debt service?).

Comment: A representative of Fredericksburg ISD stated that the formula for the debt service coverage ratio needs to add the debt service fund balance in the numerator because the districts sometimes intend to spend the fund balance.

Comment: A school official from McKinney ISD commented that the debt service coverage ratio used in Indicator 10 does not reflect the efficiency and long-term solvency of a district's long-term liabilities.

Comment: A representative of NTP Enterprises, LLC asked for clarification on whether the D variable for debt service in the calculation for Indicator 10 on the 2015-2016 Charter FIRST Ratings based on FY 2015 data and the 2016-2017 Charter FIRST Ratings based on FY 2016 data should be for principal payments and actual interest payments made or the interest expense amount (which includes adjustments for accrued interest).

Comment: A school official from Plano ISD disagreed with using the proposed Indicator 10 for the 2015-2016 School FIRST Ratings based on FY 2015 data and the 2016-2017 School FIRST Ratings based on FY 2016 data. The school official recommended that fund balance usage and recognition of the district's fiscal year versus tax year differences be taken into consideration to measure debt service coverage.

Comment: A school official from Frisco ISD asked that the agency amend the language in Indicator 10 to include an exception for fast-growth districts as in Indicator 5. The officials stated that, "Indicator 10 will require a district to have revenues that are 20 percent of the debt service payment greater than the expenditures in order to obtain maximum points." The official also stated that, "for fast growing school districts that are issuing

bonds and increasing debt service requirements, this threshold would be difficult to obtain and even more difficult to sustain."

Comment: A representative of Austin ISD commented that there is no allowance for purposely drawing down the excess fund balance to pay current year debt service by lowering or keeping the tax rate constant. The representative also stated that it seems districts would need to overtax on the debt service tax rate to achieve a ratio of 1.2 for the highest rating of 10 points for this indicator.

Comment: A representative of Keller ISD suggested that consideration be given to revenue and expenditures in the debt service fund for the debt service coverage ratio calculation.

Comment: Representatives from Texans for Quality Public Charter Schools agreed with the importance of the metric, but believed the point scale should match a superior rating to the standard of the PSF bond guarantee program. The representatives stated that a superior score on this indicator is stricter than what is required of public charter operators eligible for the PSF bond guarantee program.

Agency Response: The agency disagrees that the determination of points issues only six points for Indicator 10, as proposed, if a district sets its I&S tax rate to ensure collections exactly match principal and interest payments. However, the agency agrees that the calculation for the debt service coverage ratio should be adjusted to reflect whether districts are able to meet their obligations. Consequently, the agency modified the calculation for the debt service coverage ratio in Indicator 10 in Figure: 19 TAC §109.1001(e)(2) and Figure: 19 TAC §109.1001(e)(3) for districts to include the debt service fund balance from fund 599 in governmental funds. Therefore, the calculation was modified to (general fund unless noted otherwise):

Total Revenues - Total Expenditures + [Functions 71, 72, & 73] + Fund 599 Debt Service Fund Balance/Functions 71, 72, & 73

Pension expense and net pension liability, as applicable, will be excluded from the total expenditures.

For charter schools, the "D" variable for debt service in the calculation for Indicator 10 on the 2015-2016 Charter FIRST Ratings based on FY 2015 data and the 2016-2017 Charter FIRST Ratings based on FY 2016 data should be for principal payments and actual interest payments made, not the interest expense amount.

## STUDENT TO STAFF RATIO

(INDICATOR 12 for 2015-2016 and 2016-2017 Rating Years)

Comment: A school official from Plano ISD disagreed with using the proposed Indicator 12 for the 2015-2016 School FIRST Ratings based on FY 2015 data and the 2016-2017 School FIRST Ratings based on FY 2016 data. The school official commented that the wording of Indicator 12 (Did the district have a 15 percent or more decline in the student to staff ratio over three years (total enrollment to total staff?)) is at odds with its intent and has more to do with efficiency than solvency. The school official also commented that the 15 percent pass/fail standard is arbitrary, the indicator does not take a starting point into account, and the indicator does not take the impact of outsourced functions into account.

Comment: Representatives from Texans for Quality Public Charter Schools expressed support for the agency's automatic pass for public charter schools in their first three years of operation,

but commented that this indicator will not have a direct impact on schools.

Comment: A representative of the TCSA expressed support for the changes made to this indicator and commented that it is a positive change to measure a charter school against its own data.

Agency Response: The agency agrees that the wording of Indicator 12 does not align with the agency's intent. Therefore, the agency modified the wording for Indicator 12 for districts and for charter schools.

Indicator 12 in 19 TAC §109.1001(e)(2) and (e)(3) was modified to: "Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)"

Indicator 12 in §109.1001(f)(2) and (f)(3) was modified to: "Did the charter school not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)"

#### MATERIAL NONCOMPLIANCE

(INDICATOR 14 for 2015-2016 and 2016-2017 Rating Years)

Comment: Concerning proposed Figure: 19 TAC §109.1001(e)(2) and Figure: 19 TAC §109.1001(e)(3), the assistant superintendent for business and finance from Fredericksburg ISD commented that Indicator 14 should be reworded to state: "Did the independent external auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds as defined by the AICPA?"

Agency Response: The agency agrees and has modified the language of Indicator 14. Indicator 14 has been modified at adoption to state: "Did the independent external auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)" This modification was made to Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(f)(3).

#### COMBINATION OF INDICATORS

Comment: A representative of the Excel Academy Charter School commented that the charter holder for Excel Academy is the Harris County Juvenile Board, which is a governmental entity. The commenter stated that as a governmental entity, the annual financial audit report for the Juvenile Board's Excel Academy uses the governmental reporting model of the Governmental Accounting Standards Board (GASB) statement 45 that requires the board to report an expense and a liability for Other Post-Employment Benefits (OPEB) in the government-wide financial statements. The commenter explained that to receive an unmodified opinion in the presentation of its financial statements, Excel Academy must report an OPEB liability and expense in the government-wide financial statements as the GASB requires. The commenter went on to state that, on the contrary, Texas independent school districts do not report an OPEB liability or OPEB expense. The commenter stated that since pension expense, net pension liability (NPL), OPEB expense, and OPEB liability are similarly prepared estimates and GASB mandated, the OPEB liability and NPL should both

be excluded from a school's long-term liabilities in the government-wide financial statements with regard to Indicators 5 and 8. Additionally, the OPEB expense should be excluded from a school's expenses in the government-wide financial statements with regard to Indicators 6 and 9. The commenter recommended revising proposed Indicators 6 and 9 to exclude OPEB expense and revising proposed Indicators 5 and 8 to exclude any OPEB liability and NPL.

Agency Response: The agency appreciates the commenter's recommendation to revise proposed Indicators 5, 6, 8, and 9 to exclude OPEB expense, OPEB liability, pension expense, and NPL. The agency agrees and recognizes that the reporting requirement is beyond the control of districts and governmental charter schools and may cause a district or charter school with sound financial management and a positive fund balance to appear financially deficient due to the reporting requirement. Consequently, the agency will exclude and modify, as applicable, OPEB expense, OPEB liability, pension expense, and NPL from Indicators 5, 6, 8, and 9 calculations in Figure: 19 TAC §109.1001(e)(2), Figure: 19 TAC §109.1001(e)(3), Figure: 19 TAC §109.1001(f)(2), and Figure: 19 TAC §109.1001(e)(3). Additionally, for Indicator 8, the agency will add language that allows districts and charter schools that experience an increase in student enrollment of 10% or more over the past five years to pass this indicator.

Comment: A representative of The Innovation Academy at The University of Texas at Tyler requested that the TEA amend rules for university charters that reflect their distinctive characteristics and commented that Indicators 6 and 9 of the Charter FIRST 2015-2016 and 2016-2017 (and later years) ratings, "create a challenge for university charter schools, including the Innovation Academy at UT Tyler due to being a member of The University of Texas System and having to conform to the rigorous standards set by the UT System Office of Facilities Planning and Construction." The commenter stated that the standards are higher than for traditional charter schools because traditional charter schools pay more per square foot for their facilities and, therefore, they have fewer discretionary funds to commit to a 40-day fund balance. Additionally, the commenter stated that traditional charter schools can consider their buildings as assets in their fund balance calculations; however, Innovation Academy buildings are considered as assets of the university. The commenter stated that this has a significant negative impact on their fund balance and makes it more difficult to meet the 40-day minimum cash on hand. Finally, the commenter stated that the rent the Innovation Academy pays to UT Tyler must be structured in a way that leads to much higher rent payments for the Innovation Academy than a traditional charter school lease or purchase payments because the university must build facilities to a higher standard. The commenter noted that when it purchases buildings, the university must recoup the purchase price quicker than private business owners, which means the Innovation Academy pays higher rental rates during the first few years, further exacerbating the difficulty in meeting a 40-day cash on hand requirement. The commenter stated that the commenter understands the vital importance of the FIRST Ratings; however, in this circumstance, the 40-day cash on hand requirement presents challenges unique to university charter schools.

Agency Response: The agency appreciates the comments regarding Indicators 6 and 9. However, the agency disagrees with the request to amend the rules for the indicators. The agency recognizes the need for facilities that are built to a high standard; however, the agency encourages stewards of public funds

to be mindful of entering into contractual agreements that may cause financial hardships that may ultimately affect the financial resources that are used to benefit the students in Texas. The agency will not make the suggested changes.

#### OTHER COMMENTS RELATED TO FIRST INDICATORS

Comment: The TCTA commented that it supported the addition of the requirement for a determination by an external independent auditor regarding an unmodified opinion on the AFR on the financial statements as a whole; the new indicator regarding whether a district made timely payments to TRS, TWC, IRS, etc.; the addition of new indicators regarding days of cash on hand and ratios of debt service coverage, current asset to current liabilities, unrestricted net asset to expense, and total liability to total asset; and the new indicators regarding material noncompliance noted on AFR for grants, contracts, and laws related to either local funds, state funds, or federal funds and FSP Hardship. TCTA also commented that it supported the new structure and methodology for the student-to-staff ratio indicator so that districts without declining student enrollment are not penalized for having low student-to-staff ratios.

Agency Response: The agency agrees with the comment and appreciates the support from the TCTA.

Comment: The TCTA commented that there were no indicators addressing resource allocation and proposed that TEA add an indicator for the ratio of classroom teacher to staff.

Agency Response: The agency disagrees with the comment and maintains, as it has in the past, that requiring an indicator that measures how resources are allocated to instruction violates TEC, §39.082(c). The agency also maintains that the proposed indicators are aligned with TEC, §39.082(a)(2)(B) and (b), which enable the commissioner to provide meaningful financial oversight of district finances. Additionally, the agency has included an indicator that measures whether the ratio of student to total staff has decreased over three years and that enables the commissioner to provide meaningful financial oversight of district finances as stated in statute.

Comment: A representative of Life School thanked TEA for seeking input from charter schools and commented that, "the proposed indicators are relevant for assessing financial solvency and competence" and noted that, because of the differences that exist between school districts and charter schools, it is suggested that the difference be articulated in order to, "limit misunderstandings or animosity."

Agency Response: The agency agrees with the comment and appreciates the input from charter schools and other stakeholders. The agency welcomes questions and discussions through various avenues of communication (phone, email, etc.) from parents, teachers, administrators, students, and other interested parties who seek clarity on the differences between districts and charter schools and the factors used in determining the FIRST ratings/indicators.

Comment: A representative of Dallas ISD commented that Indicator 20 from the 2013-2014 School FIRST ratings should not be repealed and should be retained because it is the responsibility of district financial management to exercise sound financial management of district funds, which includes obtaining a reasonable rate of return on investments, and stated that the 3-month T-bill rate of return is a reasonable rate of return for investments.

Agency Response: The agency appreciates the commenter's desire to keep Indicator 20 as part of the School FIRST ratings;

however, the agency's review of past performance of districts and charters on this indicator was not a reliable indicator of financial stability or solvency. The agency disagrees with the need to maintain old Indicator 20 and maintains that the new indicators will enable districts and charter schools to demonstrate that they are exercising sound financial management.

Comment: A representative of A.W. Brown Leadership Academy commented that the 80% net asset rule does not take into consideration the increased risk a charter school assumes by having variable rate financing and is not taking into consideration the long-term impact that operating leases will have on the financial health of an organization. The commenter recommended that the agency allow an exception in the event that the school's current ratio exceeds 2.5:1, and consider adding an exception for school's that have a debt service coverage ratio in excess of 110%.

Agency Response: The agency disagrees. The proposed indicators did not include an indicator that measures the 80% net assets.

Comment: The assistant superintendent for business and finance from Fredericksburg ISD commented that the FIRST ratings should not be issued for the 2014-2015 rating year since the FY 2014 data that will be used to create the ratings was finalized before the new FIRST indicator standards were proposed. The commenter also stated that the 2015 school year is practically over and the newly proposed FIRST indicators should not be used to issue ratings in 2015. The commenter also stated that school districts would have had the opportunity to make other financial choices for their districts if the school districts had been made aware of the newly proposed FIRST indicators in a timely manner. The commenter also stated that the newly proposed indicators are financial measures for which school districts should plan, and that right now, school districts are planning for the 2016 school year and that it would be acceptable to set forth the FIRST requirements at this time for the 2016-2017 rating year.

Agency Response: The agency disagrees. There is a statutory requirement to revise the rules prior to the issuance of the 2014-2015 ratings. The indicators that will be used for the 2014-2015 ratings are nearly identical to indicators that were used in prior ratings. The only substantive changes are related to the administrative cost ratio, which was modified in such a way that districts and charters can earn additional points for achieving the same performance that generated passing scores in the past. The passing standards for the newly introduced indicators will be phased in to allow adequate time for districts and charters to plan for any changes they deem necessary.

Comment: The chief financial officer from the Rhodes School provided comments that disagreed with the TCTA position on TEA's proposed FIRST indicators for indicators 2, 13. The commenter also disagreed with TCTA regarding adding an indicator that measures resource allocation by using classroom teacher in the ratio.

Agency Response: The agency appreciates the commenter's feedback; however, it addressed comments made by another entity rather than the proposal.

#### POINTS SYSTEM

Comment: The TCSA commented that the points system should remain consistent in the 2015-2016 and 2016-2017 rating years so charter schools will have a more equitable opportunity to adjust their financial practices to the new ratings system without

incurring disparate penalties. Further, TCSA recommended adjustments to the rating structure that would enable charters that demonstrate solid and strong financial performance to rank in the superior rating category.

Agency Response: The agency appreciates the comments and agrees that school districts and charter schools should have an opportunity to prepare for the new points system. Therefore, the agency will phase in the passing standards for the newly introduced indicators to allow adequate time for districts and charter schools to plan for any changes they deem necessary. The point scales were adjusted to reflect the phase-in in 19 TAC §109.1001(e)(2) and (f)(2) and 19 TAC §109.1001(e)(3) and (f)(3) for the 2015-2016 and 2016-2017 rating years, respectively.

#### APPEALS PROCESS

Comment: The TCSA commented that, "TEA's appeal process remains inadequate, and illustrates an unlawful disconnect between Texas statute and TEA practice related to charter school financial accountability and TEA's practice of limiting appeals to those based on agency error unnecessarily limits the appeals process." Further, the commenter stated, "While we understand that not every adverse rating merits an appeal, the agency at minimum must allow for the submission of 'additional information submitted by the school' as required by Sections 39.151 and 39.082 of the Texas Education Code." The commenter encouraged the agency to consider legal arguments regarding the appeals process carefully.

Agency Response: The agency agrees with the comment in part and has modified 19 TAC §109.1001(l) to allow additional information to be submitted in the appeals process as required by TEC, §39.082 and §39.151.

Comment: A representative of Aristoi Classical Academy commented that Aristoi Classical Academy recommends that the FIRST appeal process be revised. The commenter suggested that charter schools and school districts that appeal their FIRST rating be required to write a one-page executive summary detailing their appeal, because there are details that are not disclosed in the AFR that would aid the charter school with its appeal. The commenter also stated that the one-page executive summary would allow the agency to examine each appeal in more detail to make a determination on whether the appeal warrants further review by the agency.

Agency Response: The agency disagrees that it is necessary or appropriate for the rule to contain language that explicitly requires a charter school or district to submit a one-page executive summary. The proposed FIRST appeal process allows charter schools and districts the opportunity to submit documentation that each charter school or district perceives will support the charter school's or district's position concerning the preliminary FIRST rating that the charter school or district received. Placing additional requirements or restrictions on the documentation that may be submitted during the FIRST appeal process is not necessary. The agency has given consideration to concerns regarding the appeals process and has modified 19 TAC §109.1001(l) to allow additional information to be submitted in the appeals process as required by TEC, §39.082 and §39.151.

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein requested that the proposed language of 19 TAC §109.1001(l) be revised to allow a school district or an open-enrollment charter school to appeal its FIRST rating by deleting the word "substantial" from 19 TAC §109.1001(l)(1); deleting the sentence "A

data error solely attributable to the TEA is the only basis for an appeal" and adding the sentence "Additionally, a school district or open-enrollment charter school may submit additional information relating to any indicator on which performance was considered unsatisfactory if the additional information negates the concern raised by the indicator on which performance was considered unsatisfactory" to 19 TAC §109.1001(l)(2); and adding the word "generally" and the sentence "This general rule notwithstanding, a school district or open-enrollment charter school may nonetheless submit additional information relating to an indicator on which performance was considered unsatisfactory if TEA based its preliminary determination for the indicator on an erroneous data submission and if the preliminary determination does not provide meaning financial oversight and improvement" to 19 TAC §109.1001(l)(3).

Agency Response: The agency agrees and has modified 19 TAC §109.1001(l) to allow additional information to be submitted in the appeals process as required by TEC, §39.082 and §39.151.

Comment: An individual stated that "the proposed adoption of new 19 TAC Chapter 109, Subchapter AA, Division 1, contains a fatal notice problem under Texas Administrative Procedures Act (APA), §2001.024(3)(A) and (B), because nowhere in the rule item or in the attachments does the agency make any reference to TEC, §39.151, the statute specifically governing appeals from proposed ratings under Subchapter AA, Division 1." Furthermore the commenter stated that only 19 TAC §109.1001(k), (l), and (m) are subject to the notice violation because the proposed rules do not apply TEC, §39.151, as required.

Agency Response: The agency agrees that it did not identify TEC, §39.151, by name in the proposed rule notice. However, TEC, §39.082(g), instructs the commissioner to allow for appeals before issuing final ratings thus giving the agency instruction to allow for an appeals process. This process has been implemented as required by statute. The agency allows for the appeals process in 19 TAC §109.1001(k)(2) and (l) as required by TEC, §39.082(g) and §39.151. The agency will reference TEC, §39.151, in the order adopting the rule, as provided in the APA. The agency has also modified the rule text in §109.1001(l) in response to comments received. In particular, 19 TAC §109.1001(l)(2) has been rewritten to include language allowing a school district or charter to appeal any issue that would result in changing the preliminary rating, but the rules for financial accountability must be applied uniformly and requests for exceptions are disfavored.

Comment: An individual stated that the agency's adoption of the proposed rule violates the APA because it lacks a citation to TEC, §39.151, and limits the appeals process by excluding some appeal issues permitted under TEC, §39.151 and §39.082. The commenter added that proposed new 19 TAC §109.1001(l) and (m) and current 19 TAC §109.1002(i) are outside the agency's statutory authority because of the lack of the reference to TEC, §39.151, in the notice of the proposed rule. The commenter also stated that the current and proposed rules violate the express terms in TEC, §39.082(g), by excluding important issues from review that the statute clearly requires the agency to consider. The commenter suggested correcting these alleged errors by prohibiting the enforcement of proposed new 19 TAC §109.1001(l) and (m), and current 19 TAC §109.1002(i), and then republishing the proposed new 19 TAC §109.1001(l) and (m) and allowing appeals of the preliminary FIRST ratings not subject to the current and proposed rules.

Agency Response: The agency disagrees that the rule exceeds the authority of statute. However, in response to these comments, the agency has modified 19 TAC §109.1001(l) to address the concerns raised by the commenter about application of TEC, §39.151 and §39.082(g). The agency disagrees that it is required to, and points out that it is not feasible for the agency to, hear every appeal of every indicator that every district or charter may want to appeal, which would be over 18,000 potential unique appeals. These ratings are used by both internal and external users in making decisions about the district or charter financial operations and accreditation. To hear possibly 18,000 appeals would hinder and delay decisions that need to be made in a timely manner. The agency agrees that its rule should provide the appeals process required by statute.

Comment: An individual stated that the proposed repeal of and new 19 TAC Chapter 109, Subchapter AA, Division 1, was not timely filed. The commenter added that the earliest a rule could be in effect is July 13, 2015, and the earliest day the preliminary rating would be issued and notice to file an appeal would be July 13, 2015. The commenter stated that if the agency allows 30 days for appeals, then the appeals window closes on August 12, five days after the statutory deadline of August 8, 2015. The commenter added that the agency could resolve the issue by keeping the current hearing rules in effect, modified to exclude certain portions of the rule that the commenter asserts are outside the agency's statutory authority.

Agency Response: The agency disagrees with the commenter that the proposed rule was not timely filed. The agency will issue preliminary ratings no later than August 8, 2015, as statutorily required. The planned effective date of the rule is August 6, 2015. Once the preliminary ratings are issued, districts and charters will have 30 days to file an appeal. The appeal will then be handled in accordance with the language of the newly adopted rule.

Comment: An individual stated that the proposed repeal of and new 19 TAC Chapter 109, Subchapter AA, Division 1, fails to meet basic fairness standards for complying with procedural due process and the APA. The commenter also stated that the APA prohibits ex parte communications between agency staff and the external review panel except on notice and opportunity for each party to participate. The commenter suggested that all communications between the TEA division responsible for financial accountability and the external review panel or the commissioner be in writing and copied to the school district or open-enrollment charter school.

Agency Response: The agency disagrees that its external appeals panel is governed by the Administrative Procedure Act because it is not a contested case. The agency notes that communications with the external review panel are limited to a packet of written information that includes a summary of each appeal that is prepared by TEA staff and a complete set of the documentation submitted by a district or charter school that has submitted an appeal. Responses from the panel members are submitted to the TEA in writing. TEA staff do not communicate with external appeals panel members during the review process.

#### EVALUATION OF FIRST, 19 TAC §109.1001(c)

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein requested that the proposed 19 TAC §109.1001(c) be revised by adding the following sentence to the end of the subsection: "TEA may survey or invite school district and open-enrollment charter school superintendents and business officials to obtain or provide written feedback on the rating system."

Agency Response: The agency disagrees that such language is necessary in the rule. The TEA engaged numerous stakeholders, including members of this law firm, in the development of the proposed rules over the past 18 months. In addition, the TEA has openly solicited comments from school districts and charter schools through many forums during the rule development and adoption process.

#### RATING YEAR, 19 TAC §109.1001(f)

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein requested that the proposed 19 TAC §109.1001(f) be revised by identifying FIRST ratings based solely on "...the fiscal (school) year from which the underlying financial and other data was used to calculate ratings. For instance, we suggest the following statement: The financial accountability rating indicators for fiscal year 2013-2014 are based on fiscal year 2014 financial data."

Agency Response: The agency disagrees with the suggested wording, but agrees on the need to clearly identify the rating year and the data used to produce the ratings. The rule clearly identifies the rating year and the data used to derive the ratings.

#### LOWERING OF FIRST RATING, 19 TAC §109.1001(i)

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented by requesting that the proposed 19 TAC §109.1001(i) be revised to state specific reasons concerning the lowering of a financial accountability rating of a school district or an open-enrollment charter school. In addition, the commenter requested that each school district and open-enrollment charter school be allowed to submit in writing, a request for an informal review concerning the financial accountability rating that has been lowered.

Agency Response: The agency disagrees. Each school district and open-enrollment charter school is provided with the opportunity to appeal their financial accountability rating under the criteria adopted in 19 TAC §109.1001(l). The agency disagrees that 19 TAC §109.1001(l) must provide a separate informal review for a lowered financial accountability rating. The agency acknowledges that 19 TAC §157.1121 provides a right to an informal review for an investigation under TEC, Chapter 39, which would include review of the sanction imposed.

#### CORRECTIVE ACTION PLAN, 19 TAC §109.1001(o)(7)

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein requested that the proposed 19 TAC §109.1001(o)(7) be revised by removing the following phrase, "...prepared in accordance with the instructions from the commissioner" and adding the following sentences and modifying other parts of the subsection, "At a minimum, the corrective action plan should: (1) identify and describe the financial factors that contributed to the school district's or open-enrollment charter school's applicable FIRST rating; (2) propose corrective actions to be taken by the school district or open-enrollment charter school to address the financial factors that contributed to the FIRST rating; and (3) explain how the proposed corrective actions will remedy the financial issues that contributed to the school district's or open-enrollment charter school's FIRST rating. Additionally, the commissioner may provide supplemental instructions and require other information in the corrective action plan to address the factor(s) that may have contributed to a school district's or an open-enrollment charter school's F rating."

Agency Response: The agency disagrees. The commissioner of education has the authority to modify the criteria that the commissioner requires for the financial plan as the commissioner



deems necessary. The suggested language may unnecessarily restrict the ability of the commissioner to require a plan that meets the unique circumstances of each school district or charter school subject to these requirements. The financial plan criteria set forth by the commissioner is created to address the financial weaknesses of a school district or an open-enrollment charter school that receives a substandard financial accountability rating of an F.

### 19 TAC §§109.1001 - 109.1005

STATUTORY AUTHORITY: The repeal is adopted under the Texas Education Code (TEC), §§12.104(b)(2)(L), 39.082, 39.083, 39.085, and 39.151. TEC, §12.104(b)(2)(L), applies accountability provisions to charters, specifically including the subchapters covering financial accountability and procedures for challenge of accountability determination, intervention, or sanction. TEC, §39.082, requires the commissioner to develop and implement a financial accountability rating system for public schools. The section establishes certain minimum requirements for the system, including an appeals process. TEC, §39.083, requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report. TEC, §39.085, requires the commissioner to adopt rules to implement the subchapter on financial accountability for public schools. TEC, §39.151, requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules which implement each requirement of statute applicable to districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE: The repeal implements the TEC, §§12.104(b)(2)(L), 39.082, 39.083, 39.085, and 39.151.

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

Filed with the Office of the Secretary of State on July 17, 2015.

TRD-201502696

Cristina De La Fuente-Valadez  
Director, Rulemaking

Texas Education Agency

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



### 19 TAC §109.1001

STATUTORY AUTHORITY: The new section is adopted under the Texas Education Code (TEC), §§12.104(b)(2)(L), 39.082, 39.083, 39.085, and 39.151. TEC, §12.104(b)(2)(L), applies accountability provisions to charters, specifically including the subchapters covering financial accountability and procedures for challenge of accountability determination, intervention, or sanction. TEC, §39.082, requires the commissioner to develop and implement a financial accountability rating system for public schools. The section establishes certain minimum requirements

for the system, including an appeals process. TEC, §39.083, requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report. TEC, §39.085, requires the commissioner to adopt rules to implement the subchapter on financial accountability for public schools. TEC, §39.151, requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules which implement each requirement of statute applicable to districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE: The new section implements the TEC, §§12.104(b)(2)(L), 39.082, 39.083, 39.085, and 39.151.

§109.1001. *Financial Accountability Ratings.*

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

(1) Annual Financial Report (AFR)--The audited annual report required by the Texas Education Code (TEC), §44.008, that is due to the Texas Education Agency (TEA) by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

(2) Debt--An amount of money owed to a person, bank, company, or other organization.

(3) Electronic submission--The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

(4) Financial Integrity Rating System of Texas (FIRST)--The financial accountability rating system administered by the TEA in accordance with the TEC, §39.082 and §39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools (Charter FIRST).

(5) Fiscal year--The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the charter holder in accordance with the TEC, §44.0011.

(6) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.

(7) Public Education Information Management System (PEIMS)--The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

(8) Summary of Finances (SOF) report--The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA division responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

(9) Warrant hold--The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code, §403.055.

(b) The TEA will assign a financial accountability rating to each school district and open-enrollment charter school as required by the TEC, §39.082.

(c) The commissioner of education will evaluate the rating system every three years as required by the TEC, §39.082, and may modify the system in order to improve the effectiveness of the rating system. If the rating system has been modified, the TEA will communicate changes to ratings criteria and their effective dates to school districts and open-enrollment charter schools.

(d) The TEA will use the following sources of data in calculating the financial accountability indicators for school districts and open-enrollment charter schools:

(1) AFR. For each school district and open-enrollment charter school, the TEA will use audited financial data in the district's or charter's AFR. The AFR, submitted as an electronic submission through the TEA website, must include data required in the Financial Accountability System Resource Guide (FASRG) adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide);

(2) PEIMS. The TEA will use PEIMS data submitted by the school district or open-enrollment charter school in the calculation of the financial accountability indicators.

(3) Warrant holds. The TEA will use warrant holds as reported by the Texas Comptroller of Public Accounts in the calculation of the financial accountability indicators.

(4) FSP. The TEA will use the average daily attendance (ADA) information used for FSP funding purposes for the school district or open-enrollment charter school in the calculation of the financial accountability indicators.

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015." Figure: 19 TAC §109.1001(e)(1)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016." Figure: 19 TAC §109.1001(e)(2)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017." The financial accountability rating indicators for rating years after 2016-2017 will use the same calculation and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(e)(3)

(4) The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2014-2015 are based on fiscal year 2014 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2014-2015." Figure: 19 TAC §109.1001(f)(1)

(2) The financial accountability rating indicators for rating year 2015-2016 are based on fiscal year 2015 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2015-2016." Figure: 19 TAC §109.1001(f)(2)

(3) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated August 2015 for rating year 2016-2017." The financial accountability rating indicators for rating years after 2016-2017 will use the same calculation and scoring method provided in the figure in this paragraph. Figure: 19 TAC §109.1001(f)(3)

(4) The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2014-2015 are as follows.

(1) P for pass. This rating applies only to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a P rating if it scores within the applicable range established by the commissioner for a P rating.

(2) F for substandard achievement. This rating applies to the financial accountability rating for rating year 2014-2015 based on fiscal year 2014 financial data. In accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(h) The types of financial accountability ratings that school districts or open-enrollment charter schools may receive for the rating year 2015-2016 and all subsequent rating years are as follows.

(1) A for superior achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an A rating if it scores within the applicable range established by the commissioner for an A rating.

(2) B for above standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a B rating if it scores within the applicable range established by the commissioner for a B rating.

(3) C for standard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive a C rating if it scores within the applicable range established by the commissioner for a C rating.

(4) F for substandard achievement. Beginning with the financial accountability rating for rating year 2015-2016 and all subsequent rating years, in accordance with the procedures established in this section, a school district or an open-enrollment charter school will receive an F rating if it scores within the applicable range established by the commissioner for an F rating.

(i) The commissioner may lower a financial accountability rating based on the findings of an action conducted under the TEC, Chapter 39.

(j) A financial accountability rating remains in effect until replaced by a subsequent financial accountability rating.

(k) The TEA will issue a preliminary financial accountability rating to a school district or an open-enrollment charter school on or before August 8 of each year. The TEA will base the financial accountability rating for a rating year on the data from the fiscal year preceding the rating year.

(1) The TEA will not delay the issuance of the preliminary or final rating if a school district or an open-enrollment charter school fails to meet the statutory deadline under the TEC, §44.008, for submitting the AFR. Instead, the school district or open-enrollment charter school will receive an F rating for substandard achievement.

(2) If the TEA receives an appeal of a preliminary rating, described by subsection (l) of this section, the TEA will issue a final rating to the school district or open-enrollment charter school no later than 60 days after receiving the appeal.

(3) If the TEA does not receive an appeal of a preliminary rating, described by subsection (l) of this section, the preliminary rating automatically becomes a final rating 31 days after issuance of the preliminary rating.

(l) A school district or an open-enrollment charter school may appeal its preliminary financial accountability rating through the following appeals process.

(1) The TEA division responsible for financial accountability must receive a written appeal no later than 30 days after the TEA's release of the preliminary rating. The appeal must include adequate evidence and additional information that supports the school district's or open-enrollment charter school's position. Appeals received 31 days or more after TEA issues a preliminary rating will not be considered.

(2) A data error attributable to the TEA is a basis for an appeal. If a preliminary rating contains a data error attributable to the TEA, a school district or an open-enrollment charter school may submit a written appeal requesting a review of the preliminary rating.

(3) A school district or an open-enrollment charter school may appeal any adverse issue it identifies in the preliminary rating. However, the financial accountability rating system is required to apply the rules uniformly. Therefore, an error by a school district or an open-enrollment charter school in recording data or submitting data through the TEA data collection and reporting system is not a valid basis for appealing a preliminary rating and unlikely to negate concerns raised by the indicator. The appeals process is not a permissible method to correct data that were inaccurately reported by the school district or open-enrollment charter school after those data were certified as ac-

curate. A request for exception to the rules for a school district or an open-enrollment charter school is disfavored and likely to be denied.

(4) The TEA will only consider appeals that would result in a change of the preliminary rating.

(5) The TEA division responsible for financial accountability will select an external review panel to independently oversee the appeals process.

(6) The TEA division responsible for financial accountability will submit the information provided by the school district or open-enrollment charter school to the external review panel members for review.

(7) Each external review panel member will examine the appeal and supporting documentation and will submit his or her recommendation to the TEA division responsible for financial accountability.

(8) The TEA division responsible for financial accountability will compile the recommendations and forward them to the commissioner.

(9) The commissioner will make a final ratings decision.

(m) A final rating issued by the TEA under this section may not be appealed under the TEC, §7.057, or any other law or rule.

(n) A financial accountability rating by a voluntary association is a local option of the school district or open-enrollment charter school, but it does not substitute for a financial accountability rating by the TEA.

(o) Each school district and open-enrollment charter school is required to report information and financial accountability ratings to parents, taxpayers, and other stakeholders by implementing the following reporting procedures.

(1) Each school district and open-enrollment charter school must prepare and distribute an annual financial management report in accordance with this subsection.

(2) Each school district and open-enrollment charter school must provide the public with an opportunity to comment on the report at a public hearing.

(3) The school district's or open-enrollment charter school's annual financial management report must include:

(A) a description of its financial management performance based on a comparison, provided by the TEA, of its performance on the indicators established by the commissioner and reflected in this section. The report will contain information that discloses:

(i) state-established standards; and

(ii) the school district's or open-enrollment charter school's financial management performance under each indicator for the current and previous year's financial accountability ratings;

(B) any descriptive information required by the commissioner, including:

(i) a copy of the superintendent's current employment contract or other written documentation of employment if no contract exists. This must disclose all compensation and benefits paid to the superintendent. The school district or open-enrollment charter school may publish the superintendent's employment contract on its website instead of publishing it in the annual financial management report;

(ii) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of the superintendent

and each board member and total reimbursements received by the superintendent and each board member. This includes transactions on the school district's or open-enrollment charter school's credit card(s), debit card(s), stored-value card(s), and any other similar instrument(s) to cover expenses incurred by the superintendent and each board member. The summary schedule must separately report reimbursements for meals, lodging, transportation, motor fuel, and other items. The summary schedule of total reimbursements should not include reimbursements for supplies and materials that were purchased for the operation of the school district or open-enrollment charter school;

(iii) a summary schedule for the fiscal year of the dollar amount of compensation and fees received by the superintendent from an outside school district or open-enrollment charter school or any other outside entity in exchange for professional consulting or other personal services. The schedule must separately report the amount received from each entity;

(iv) a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of \$250 or more received by the executive officers and board members. This reporting requirement applies only to gifts received by the school district's or open-enrollment charter school's (or charter holder's) executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, Relationships by Consanguinity or by Affinity) from an outside entity that received payments from the school district or open-enrollment charter school (or charter holder) in the prior fiscal year and to gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer's or board member's duties or to investigate matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education (this exclusion does not apply to trips for entertainment purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had a total economic value of less than \$250 per executive officer or board member; and

(v) a summary schedule for the fiscal year of the dollar amount received by board members for the total amount of business transactions with the school district or open-enrollment charter school (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(C) any other information the board of trustees of the school district or open-enrollment charter school determines to be useful.

(4) The board of trustees of each school district or open-enrollment charter school must hold a public hearing on the annual financial management report within two months after receiving a final financial accountability rating. The public hearing must be held at a location in the district's or open-enrollment charter school's facilities. The board must give notice of the hearing to owners of real estate property in the geographic boundaries of the school district or open-enrollment charter school and to parents of school district or open-enrollment charter school students. In addition to other notice required by law, the board must provide notice of the hearing:

(A) to a newspaper of general circulation in the geographic boundaries of the school district or each campus of an open-enrollment charter school once a week for two weeks prior to holding the public meeting, providing the time and place of the hearing. The first notice in the newspaper may not be more than 30 days prior to the

public meeting or less than 14 days prior to the public meeting. If no newspaper is published in the county in which the district's central administration office is located or within the geographic boundaries of an open-enrollment charter school's campus, then the board must publish the notice in the county nearest to the county seat of the county in which the district's central administration office is located or in which the campus of the open-enrollment charter school is located; and

(B) through electronic mail to the mass communication media serving the school district or open-enrollment charter school, including, but not limited to, radio and television.

(5) At the hearing, the school district or open-enrollment charter school must provide the annual financial management report to the attending parents and taxpayers.

(6) The school district or open-enrollment charter school must retain the annual financial management report for at least three years after the public hearing and make it available to parents and taxpayers upon request.

(7) Each school district or open-enrollment charter school that received an F rating must file a corrective action plan with the TEA, prepared in accordance with instructions from the commissioner, within one month after the school district's or open-enrollment charter school's public hearing. The commissioner may require certain information in the corrective action plan to address the factor(s) that may have contributed to a school district's or an open-enrollment charter school's F rating.

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 July 17, 2015.

TRD-201502697

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 22, 2015

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



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 170. PAIN MANAGEMENT

##### 22 TAC §§170.1 - 170.3

The Texas Medical Board (Board) adopts amendments to §§170.1 - 170.3, concerning Purpose, Definitions and Guidelines, under Chapter 170, Pain Management. Section 170.1 and §170.3 are adopted with nonsubstantive changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2468). The text of the rules will be republished. Section 170.2 is adopted without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2468). The text will not be republished. Section 170.3 changes the section title name from "Guidelines" to "Minimum Requirements for the Treatment of Chronic Pain".

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to

the rules at a meeting held on March 18, 2015. The comments were incorporated into the proposed rules.

## SECTION BY SECTION SUMMARY

### §170.1

The amendments to §170.1 clarify the requirements related to a physician's treatment of pain. Throughout the section, amendments modify language so that the provisions are more clearly delineated as minimum requirements that a physician must do in every case when treating pain. Terms such as "policy" and "guideline(s)" have been changed to read as "rule(s)" and "minimum requirements", and the term "should" has been changed in certain cases to "must."

Language under paragraphs (5) and (6) is deleted to clarify that the quantity or duration of drug therapy may be a primary factor in determining whether treatment meets the standard of care and therefore represents sound clinical judgment and to clarify that, by itself, documentation of a physician's rationale and maintenance of medical records that are legible, complete, and accurate may not necessarily demonstrate sound clinical judgment. Other language in paragraph (5) is moved to the beginning paragraph of the section.

Language in paragraph (7) providing that a "treatment plan for acute, episodic pain may note only the dosage and frequency of drugs prescribed and that no further treatment is planned" is deleted, as treatment plans for acute pain may require more information even in the event that no further treatment is planned, depending on the circumstances of each case.

Language in paragraph (8) stating that an "explanation of the physician's rationale is especially required for cases in which treatment with scheduled drugs is difficult to relate to the patient's objective physical, radiographic, or laboratory findings" is deleted, as the statement is redundant and encompassed in the first sentences of the paragraph.

Definitions of the terms "shall" and "should" as applied to physician responsibility discussed in paragraph (9) are deleted, as other amendments clarifying minimum requirements for a physician's treatment of pain make such distinctions no longer necessary.

Other amendments reflect general cleanup and reorganization of the section.

### §170.2

The amendments to §170.2 delete definitions for "improper pain treatment" and "non-therapeutic" found in paragraphs (8) and (9) respectively, as such terms are encompassed in the concept of the standard of care that will be determined and applied by the board in reviewing a physician's treatment of pain. Other amendments reflect renumbering to account for the deleted provisions.

### §170.3

The amendments to §170.3 change the title of the section to "Minimum Requirements for the Treatment of Chronic Pain." The amendments further clarify the requirements related to a physician's treatment of pain. Throughout the section, amendments modify language so that the provisions are more clearly delineated as minimum requirements that a physician must do in every case when treating pain. Terms such as "policy" and "guideline(s)" have been changed to read as "rule(s)" and "minimum requirements", and the term "should" has been changed to "must."

As part of the minimum requirements, new subparagraph (C) is added to §170.3(1) providing that prior to prescribing dangerous drugs or controlled substances for the treatment of chronic pain, a physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code and must consider obtaining a baseline toxicology drug screen to determine the presence of drugs in the patient's system, if any. The new subparagraph further provides that if a physician determines that such steps are not necessary prior to prescribing dangerous drugs or controlled substances to the patient, the physician must document in the medical record his or her rationale for not completing such steps.

Section 170.3(4), relating to the agreement for treatment of chronic pain, amends language so that such agreements must be in place if the treatment plan includes extended drug therapy and adds language to §170.3(4)(D), clarifying that only one pharmacy may be used for chronic pain prescriptions, clarifying that the pharmacy is to be designated by the patient, and providing an exception to the one-pharmacy requirement for those situations in which the pharmacy is out of stock of the drug prescribed at the time that the prescription is communicated by the physician to the pharmacy or the patient presents to have the drug dispensed.

New clause (v) is added to §170.3(5)(E), relating to the periodic review of the treatment of chronic pain. The new clause provides that physicians must periodically review patients' compliance with the prescribed treatment plan and reevaluate for any potential for substance abuse or diversion and, in such a review, must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code and consider obtaining a toxicology drug screen to determine the presence of drugs in the patient's system, if any. The new clause further provides that if a physician determines that such steps are not necessary, the physician must document in the medical record his or her rationale for not completing such steps.

The Board has determined that the public benefit anticipated as a result of enforcing this section will be to have rules that provide minimum standards for providing safe and effective treatment of patients with pain, through appropriate prescribing of controlled substances, thereby decreasing the chance of patient adverse outcomes and improving the public health and welfare.

## SUMMARY OF COMMENTS RECEIVED

The Board received public written comments from the Texas Medical Association (TMA), the Texas Pain Society (TPS), the National Association of Chain Drug Stores (NACDS), and an individual physician commenter.

### COMMENT No. 1.

For proposed §170.1, TMA recommended removing the first sentence proposed as new text, which states, "Physicians should not fear board action if they provide proper pain treatment utilizing sound clinical judgment", as it is a restatement of other existing language in the same section.

RESPONSE: The Board agrees with this statement. Accordingly, the amendments are adopted with nonsubstantive changes deleting this language to the proposed text to §170.1

as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2468).

TMA also opposed the second new sentence proposed for §170.1, which states that "Sound clinical judgment results from evidence-based medicine that meets the generally accepted standard of care." TMA stated that the proposed new language is less accurate than existing language proposed for deletion, providing that "sound clinical judgment results from evidence-based medicine and/or the use of generally accepted standards."

RESPONSE: The Board agrees in part that the proposed language is not accurate, but does not agree that the existing statement proposed for deletion is more accurate. The amendments are adopted with nonsubstantive changes to the proposed text to §170.1, as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2468), so that the phrase proposed is changed to read "Sound clinical judgment results from the use of generally accepted standards of care, which include evidence-based medicine, when available." The Board will bring this issue back to a stakeholder process in the future for further consideration.

Next, TMA opposed proposed changes to §170.3(1)(C) and §170.3(5)(E)(v), requiring that physicians consider reviewing prescription data and history through the Prescription Drug Monitoring program related to patients undergoing treatment for chronic pain prior to issuing prescriptions for dangerous drugs or controlled substances, and requiring that if a physician determines that such a step is unnecessary, he or she must document the decision to not make such a review and rationale in the medical record. TMA stated in part that despite system improvements, the performance of the monitoring system has proved at times to be untimely, inaccurate, and "difficult to use and sometimes difficult to even access." TMA also stated that many positive changes to the system are expected, as SB 195 has authorized certain changes expected to improve the timeliness and accuracy of the data, but recommended withdrawing the proposed language until SB 195's changes are fully implemented, including the transfer of responsibility for the system to the Pharmacy Board. At that stage, TMA recommended that all changes be considered through a stakeholder meeting involving the Pharmacy Board. If not withdrawn, TMA recommended clarifying that the requirement relates to a physician's treatment of "chronic pain."

RESPONSE: The Board appreciates TMA's comments, agreeing in part. The Board agrees that clarifying that the requirement relates to the treatment of chronic pain is appropriate and the Board adopts the proposed amendments with that nonsubstantive change to the proposed text to §170.3, as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2468). However, the Board disagrees that the prescription drug monitoring system is not currently functioning, useful, timely, or accurate. The Board believes that obtaining information from the system is now a standard step implemented as part of pain physicians' monitoring processes for patients receiving prescriptions for medications to treat chronic pain. The Board believes that since the system's implementation, it has proven as a useful tool in identifying patients who may be "doctor shoppers" or better ensuring improved coordination of care between multiple physicians who may be treating a patient who does not timely provide such information. The Board's proposed language incorporated stakeholder feedback encouraging the addition of such language, stating that the system has brought added value to physicians' various tools for monitoring a chronic pain patient's

progress and compliance with treatment. As responsibility for the system transfers to the Texas Pharmacy Board, the Board has learned that there will be little interruption to the information system's operation, if any. It is also important to emphasize that the proposed language does not actually mandate the use of the system; rather, it requires that physicians consider utilizing the information system, and if a determination is made that access of the system is not necessary prior to initiating a particular patient's treatment, that such physicians document the rationale. The Board agrees that as SB 195's changes are implemented by the Texas Pharmacy Board, it will be important and necessary to revisit these issues through a stakeholder process.

COMMENT NO. 2.

TPS supported and opposed the proposed amendments to §170.3 in part. First, TPS recommended adding language to the title of §170.3 to clarify and reflect that the guidelines under §170.3 relate to the treatment of chronic pain. Next, TPS recommended adding the same language "for the treatment of chronic pain" to proposed new §170.3(1)(C). TPS requested that new language proposed to §170.3(1)(C) and (5)(E)(v) requiring that physicians consider urine drug testing be changed so that physicians consider obtaining a baseline toxicology drug screen to determine "the presence of drugs in a patient, if any", rather than "drug levels", stating that "urine drug levels do not predict the quantity of drug consumed...and with regards to illicit drugs, the level is not as important as knowing if it is present or not present." Next, TPS recommended striking "Department of Public Safety" in new §170.3(1)(C) and (5)(E)(v) to reflect the transfer of responsibility for the PAT system to the Texas Pharmacy Board. Next, TPS recommended changing the same language to §170.3(4)(A) with respect to "drug levels" versus "presence" of drugs. Finally, TPS opposed proposed changes adding clause (v) to §170.3(5)(E), requiring that physicians consider periodically obtaining data from the drug monitoring system and follow up drug screens, recommending that such monitoring be completed "based upon clinical necessity", and stating that "to repeat [review of the drug monitoring program information] and/or toxicology drug screens at every visit would be overly burdensome and expensive. Furthermore it would have to be determined if the [drug monitoring program] system is robust enough to handle such a high demand for reports."

RESPONSE: The Board agrees in part with TPS's comments made to proposed changes to §170.3, and disagrees in part. The Board adopts the proposed amendments with nonsubstantive changes to the proposed text to §170.3, as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2468), so that: 1) the title of §170.3 and language of §170.3(1)(C) are changed to better clarify that the minimum requirements relate to the treatment of chronic pain; 2) language referring to the "PAT" system is changed to reflect the transfer of responsibility to the Texas Pharmacy Board; and 3) language in §170.3(1)(C) and (5)(E)(v) is changed related to a physician's required consideration of obtaining toxicology drug screen to determine the "presence of drugs" rather than "drug levels."

However, the board disagrees that language under §170.3(5)(E)(v) would be overly burdensome or inappropriate, as it requires physicians to "consider" "periodically" reviewing prescription data and history related to the patient, if any, contained in the prescription drug monitoring program and obtaining a follow up toxicology drug screen, leaving the appropriate frequency of such reviews to be determined on a case-by-case basis and in accordance with the standard

of care based upon each case's circumstances. Further, the Board believes that such ongoing consideration of taking such steps is a vital part of a physician's determination of a patient's ongoing progress and compliance with the treatment plan and objectives. If the physician's determination is that such actions are not clinically indicated or otherwise appropriate to undertake at that point in the patient's treatment, the physician must document his or her rationale as to the basis for that determination.

Finally, a physician's determination of whether such ongoing review of the prescription drug monitoring program or drug testing is required necessarily requires a physician's determination of the clinical indications of such, making the phrase "if clinically indicated" somewhat redundant. Therefore, the Board declines to withdraw the proposed language under §170.3(5)(E)(v) or add the phrase "if clinically indicated." However, in an effort to clarify that proposed language under §170.3(1)(C) and (5)(E)(v) requires a physician to "consider" obtaining toxicology drug screens before prescribing and periodically throughout the continuation of the patient's treatment for chronic pain, the Board adopts the amendments adding the word "consider" before the phrase "obtaining at a minimum a toxicology drug screen to determine the presence of drugs in a patient, if any" to both §170.3(1)(C) and (5)(E)(v). Finally, the Board declines to make the requested change to §170.3(4)(A), as the Board did not propose such a change for notice and comment, and believes such a change would be more substantive and require further stakeholder feedback before adopting. The Board will hold a stakeholder meeting in the near future to consider such issues.

#### COMMENT NO. 3

NACDS expressed concern for proposed changes to §170.3(4), relating to required chronic pain agreements between physicians and patients, and the requirement that such agreements limit the patient to only one patient-designated pharmacy for prescriptions for the treatment of chronic pain, stating that patients may confuse such agreements with mandates that pharmacies fill such prescriptions, not understanding that the agreements do not mandate that pharmacists fill the prescriptions.

Additionally, NACDS recommended expanding the exceptions made to the one-pharmacy requirement, expressing support for the one exception provided for in the proposed amendments, but stating that additional situations in which patients might need to fill the prescription at a pharmacy other than the one designated under an agreement exist. NACDS expressed support for the amendments' proposed requirements related to the prescription drug monitoring system, and stated that those requirements further made the proposed one-pharmacy "lock-in" unnecessary. NACDS stated that should the Board adopt such a requirement, that it add language defining a pharmacy as "a location, or number of locations under common ownership that electronically share a real time, online database, which are licensed by the respective state board(s) of pharmacy to dispense prescription drugs to patients in the state of Texas." Finally, NACDS requested clarification on the meaning of "extended drug therapy", stating that this creates a "vague and subjective standard" and requested that the phrase "for the treatment of chronic pain" be added to §170.3(4)(C), relating to the agreement's requirement that "only one physician will prescribe dangerous and scheduled drugs."

#### RESPONSE:

The Board appreciates NACDS's concerns for patient access to medications, but respectfully disagrees that the amendments will unduly restrict such access. The Board believes that the standard of care requires such agreements, as they have been proven to be an essential tool used by chronic pain physicians in monitoring patient compliance with treatment. The Board has not received information indicating that such agreements have unduly restricted patients' access to medications. Further, the amendments add an exception to the pharmacy lock-in for situations in which the pharmacies are out of stock of drugs prescribed, and the Board finds that this exception will sufficiently protect patient access to medications needed for the treatment of chronic pain, while better protecting the public from possible diversion or abuse resulting from "pharmacy shopping." Therefore, the Board declines to withdraw this proposed pharmacy "lock-in" language. With respect to NACDS's requests for a new definition of pharmacy, additional language clarifying "extended drug therapy", and that certain language be added to §170.3(4)(C), the Board declines to make such changes, as they would be substantive and require further stakeholder input. The Board will bring such issues to the stakeholders in the future.

#### COMMENT NO. 4

The Board received a comment from an individual physician opposed to the proposed amendments, stating that changing the guidelines to minimum requirements will result in increased and undue regulatory burdens for physicians prescribing controlled substances to patients, and will make treating pain more expensive and difficult.

#### RESPONSE:

The Board disagrees with the commenter. The amendments adopted are being made to clarify the minimum requirements related to the treatment of chronic pain. To better clarify the application of the rules, the Board adopts the amendments with non-substantive changes to the text so that the title to §170.3 states "Minimum Requirements for the Treatment of Chronic Pain" and so that language added to §170.3(1)(C) and (5)(E)(v) likewise reflect that the required steps are to be implemented prior to prescribing and at periodic intervals related to a treatment plan for chronic pain. The requirements will provide physicians treating chronic pain with clearer guidance about the minimum standards for providing safe and effective treatment of patients with pain, through appropriate prescribing of controlled substances, thereby decreasing the chance of patient adverse outcomes and improving the public health and welfare. The Board declines to withdraw the proposed amendments and adopts the amendments with nonsubstantive changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2468). The amendments will be republished.

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 adopted under the authority of the Texas Occupations Code Annotated, Chapter 107.

#### *§170.1. Purpose.*

The treatment of pain is a vital part of the practice of medicine. Patients look to physicians not only to cure disease, but also to try to relieve their pain. Physicians should be able to treat their patients' pain using sound clinical judgment without fear that the board will pursue

disciplinary action. Sound clinical judgment results from the use of generally accepted standards of care, which include evidence-based medicine, when available. This rule sets forth minimum requirements related to the proper treatment of pain. The board's intent is to protect the public and give guidance to physicians. The principles underlying this rule include:

(1) Pain is a medical condition that every physician sees regularly. It is an integral part of the practice of medicine. Patients deserve to have medical treatment for their pain, whether the pain is acute or chronic, mild or severe. The goal of pain management is to treat the patient's pain in relation to overall health, including physical function, psychological, social, and work-related factors.

(2) The regulatory atmosphere must support a physician's ability to treat pain, no matter how difficult the case, using whatever tools are most appropriate. Drugs, including opiates, are essential tools for the treatment of pain.

(3) The board is charged by the Legislature with the responsibility to assure that drugs are used in a therapeutic manner. A license to practice medicine gives a physician legal authority to prescribe drugs for pain. The physician has a duty to use that authority to help, and not to harm patients and the public.

(4) Harm can result when a physician does not use sound clinical judgment in using drug therapy. If the physician fails to apply sufficient drug therapy, the patient will likely suffer continued pain and may demonstrate relief-seeking behavior, known as pseudoaddiction. On the other hand, non-therapeutic drug therapy may lead to or contribute to abuse, addiction, and/or diversion of drugs. As with everything in the practice of medicine, physicians must be well informed of and carefully assess the risks and the benefits as they apply to each case.

(5) The extent of medical records must be legible, complete, accurate and current for each patient.

(6) Treatment of chronic pain requires a reasonably detailed and documented plan to assure that the treatment is monitored and evaluated on an ongoing basis.

(7) The intent of the board is not to impose regulatory burdens on the practice of medicine. Rather, these rules set forth those items expected to be done by any reasonable physician involved in the treatment of pain.

#### *§170.3. Minimum Requirements for the Treatment of Chronic Pain.*

A physician's treatment of a patient's pain will be evaluated by considering whether it meets the generally accepted standard of care and whether the following minimum requirements have been met:

(1) Evaluation of the patient.

(A) A physician is responsible for obtaining a medical history and a physical examination that includes a problem-focused exam specific to the chief presenting complaint of the patient.

(B) The medical record shall document the medical history and physical examination. In the case of chronic pain, the medical record must document:

- (i) the nature and intensity of the pain;
- (ii) current and past treatments for pain;
- (iii) underlying or coexisting diseases and conditions;
- (iv) the effect of the pain on physical and psychological function;

(v) any history and potential for substance abuse or diversion; and

(vi) the presence of one or more recognized medical indications for the use of a dangerous or scheduled drug.

(C) Prior to prescribing dangerous drugs or controlled substances for the treatment of chronic pain, a physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code and consider obtaining at a minimum a baseline toxicology drug screen to determine the presence of drugs in a patient, if any. If a physician determines that such steps are not necessary prior to prescribing dangerous drugs or controlled substances to the patient, the physician must document in the medical record his or her rationale for not completing such steps.

(2) Treatment plan for chronic pain. The physician is responsible for a written treatment plan that is documented in the medical records. The medical record must include:

(A) How the medication relates to the chief presenting complaint of chronic pain;

(B) dosage and frequency of any drugs prescribed;

(C) further testing and diagnostic evaluations to be ordered, if medically indicated;

(D) other treatments that are planned or considered;

(E) periodic reviews planned; and

(F) objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function.

(3) Informed consent. It is the physician's responsibility to discuss the risks and benefits of the use of controlled substances for the treatment of chronic pain with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. This discussion must be documented by either a written signed document maintained in the records or a contemporaneous notation included in the medical records. Discussion of risks and benefits must include an explanation of the:

(A) diagnosis;

(B) treatment plan;

(C) anticipated therapeutic results, including the realistic expectations for sustained pain relief and improved functioning and possibilities for lack of pain relief;

(D) therapies in addition to or instead of drug therapy, including physical therapy or psychological techniques;

(E) potential side effects and how to manage them;

(F) adverse effects, including the potential for dependence, addiction, tolerance, and withdrawal; and

(G) potential for impairment of judgment and motor skills.

(4) Agreement for treatment of chronic pain. A proper patient-physician relationship for treatment of chronic pain requires the physician to establish and inform the patient of the physician's expectations that are necessary for patient compliance. If the treatment plan includes extended drug therapy, the physician must use a written pain management agreement between the physician and the patient outlining patient responsibilities, including the following provisions:



(A) the physician may require laboratory tests for drug levels upon request;

(B) the physician may limit the number and frequency of prescription refills;

(C) only one physician will prescribe dangerous and scheduled drugs;

(D) only one pharmacy designated by the patient will be used for prescriptions for the treatment of chronic pain, unless the designated pharmacy under the agreement is out of stock of the drug prescribed at the time that the prescription is communicated by the physician to the pharmacy or patient presents to have the drug dispensed; and

(E) reasons for which drug therapy may be discontinued (e.g. violation of agreement).

(5) Periodic review of the treatment of chronic pain.

(A) The physician must see the patient for periodic review at reasonable intervals in view of the individual circumstances of the patient.

(B) Periodic review must assess progress toward reaching treatment objectives, taking into consideration the history of medication usage, as well as any new information about the etiology of the pain.

(C) Each periodic visit shall be documented in the medical records.

(D) Contemporaneous to the periodic reviews, the physician must note in the medical records any adjustment in the treatment plan based on the individual medical needs of the patient.

(E) A physician must base any continuation or modification of the use of dangerous and scheduled drugs for pain management on an evaluation of progress toward treatment objectives.

(i) Progress or the lack of progress in relieving pain must be documented in the patient's record.

(ii) Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, and/or improved quality of life.

(iii) Objective evidence of improved or diminished function must be monitored. Information from family members or other caregivers, if offered or provided, must be considered in determining the patient's response to treatment.

(iv) If the patient's progress is unsatisfactory, the physician must reassess the current treatment plan and consider the use of other therapeutic modalities.

(v) The physician must periodically review the patient's compliance with the prescribed treatment plan and reevaluate for any potential for substance abuse or diversion. In such a review, the physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code and consider obtaining at a minimum a toxicology drug screen to determine the presence of drugs in a patient, if any. If a physician determines that such steps are not necessary, the physician must document in the medical record his or her rationale for not completing such steps.

(6) Consultation and Referral. The physician must refer a patient with chronic pain for further evaluation and treatment as necessary. Patients who are at-risk for abuse or addiction require special

attention. Patients with chronic pain and histories of substance abuse or with co-morbid psychiatric disorders require even more care. A consult with or referral to an expert in the management of such patients must be considered in their treatment.

(7) Medical records. The medical records shall document the physician's rationale for the treatment plan and the prescription of drugs for the chief complaint of chronic pain and show that the physician has followed these rules. Specifically the records must include:

(A) the medical history and the physical examination;

(B) diagnostic, therapeutic and laboratory results;

(C) evaluations and consultations;

(D) treatment objectives;

(E) discussion of risks and benefits;

(F) informed consent;

(G) treatments;

(H) medications (including date, type, dosage and quantity prescribed);

(I) instructions and agreements; and

(J) periodic reviews.

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 July 15, 2015.

TRD-201502669

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Effective date: August 4, 2015

Proposal publication date: May 8, 2015

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



## PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

### CHAPTER 367. ENFORCEMENT

#### 22 TAC §367.15

The Texas State Board of Plumbing Examiners (Board) adopts new §367.15 without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2369). The rule establishes the procedures to follow for certain outcomes of cases prosecuted at the State Office of Administrative Hearings (SOAH). It also addresses who bears the burden of proof in license denial cases and the consequences if an applicant fails to appear at a license denial hearing.

Subsection (a) of this rule addresses cases in which a party who does not bear the burden of proof fails to appear at a contested hearing. It resolves the issue of whether staff at the Texas State Board of Plumbing Examiners (Board) must draft a default order or whether the Administrative Law Judge (ALJ) presiding at the contested hearing must issue a default proposal for decision. This subsection requires that the ALJ prepare a default proposal for decision.

Subsection (b) addresses cases in which an ALJ fails to issue a default proposal for decision. The proposal greatly streamlines the preparation of the final order because staff can now state that the final order deems that the allegations in the complaint are true rather than prepare a lengthy final order that lists each allegation against the respondent that is contained in the complaint.

Subsection (c) clarifies the appeal process for a respondent who contests a final order issued after a default order is adopted by the Board.

Subsection (d) clarifies the consequences to a respondent who fails to appear at a license denial hearing at SOAH.

Subsection (e) clarifies that the applicant in a license denial case bears the burden of proof at a license denial hearing.

No comments were received on the proposed new rule.

Section 367.15 is adopted under and affects Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer Chapter 1301 of the Texas Occupations Code.

No other statute, article, or code is affected by this adopted new rule.

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

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

TRD-201502678

Lisa Hill

Executive Director

Texas State Board of Plumbing Examiners

Effective date: August 4, 2015

Proposal publication date: May 1, 2015

For further information, please call: (512) 936-5224



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER V. FRANCHISE TAX

###### 34 TAC §3.598

The Comptroller of Public Accounts adopts new §3.598, concerning margin: tax credit for certified rehabilitation of certified historic structures, without changes to the proposed text as published in the June 12, 2015, issue of the *Texas Register* (40 TexReg 3620).

This section implements House Bill 500, Section 14, 83rd Legislature, 2013, effective January 1, 2015, which amended Tax Code, Chapter 171, to add new Subchapter S, to create a franchise tax credit for the certified rehabilitation of a certified historic structure in Texas.

This section provides requirements for establishing a tax credit related to a certified rehabilitation of a certified historic structure under Tax Code, Chapter 171, Subchapter S.

Subsection (a) provides the effective date of the provisions in this section as established in House Bill 500.

Subsection (b) provides definitions for certain terms used throughout the section. Paragraph (1) defines the term "audited cost report" with the same meaning that term is given in Tax Code, §171.904(c)(1). The "audited cost report" is issued by a certified public accountant, as defined by Occupation Code, §901.002, and provides the itemized eligible costs and expenses incurred by the entity for purposes of calculating the credit for rehabilitation of a certified historic structure. Paragraph (2) defines the term "certificate of eligibility" as the certification issued by the Texas Historical Commission under Tax Code, §171.904. The definitions of the terms "certified historic structure," "certified rehabilitation," "commission," and "eligible costs and expenses," in paragraphs (3), (4), (5), and (6), respectively, are taken directly from Tax Code, §171.901. Paragraph (7) defines "placed-in-service date" as the date specified in the certificate of eligibility issued by the commission and is used to determine the date the comptroller will recognize that the credit is earned and may be established with the comptroller. Paragraph (8) defines the term "year" as a calendar year, the meaning assigned by Tax Code, §101.003 (Definitions).

Subsection (c) identifies the qualifications for the credit pursuant to Tax Code, §171.903. Such qualifications include a placed in service date on or after September 1, 2013, an ownership interest in the certified historic structure in the year during which the structure is placed in service, and total eligible costs and expenses exceeding \$5,000. These criteria will be evaluated first by the commission to determine whether an entity qualifies for the issuance of a certificate of eligibility.

Subsection (d) identifies the requirements to establish the credit with the comptroller. Paragraph (1) identifies the documentation to be provided to establish the credit. The forms required to establish the credit with the comptroller's office include: the Texas Franchise Tax Historic Structure Credit Registration; the certificate of eligibility issued by the commission, confirming the property is a certified historic structure, the rehabilitation qualifies as a certified rehabilitation, and the date the structure was first placed in service after the rehabilitation; and an audited cost report issued by a certified public accountant, as defined by Occupations Code, §901.002, that itemizes the eligible costs and expenses incurred by the entity in the certified rehabilitation of the certified historic structure. Paragraph (2) addresses when a credit may be established with the comptroller's office. An entity may establish a credit by submitting all required documentation listed in paragraph (1) on or with the report for the period for which the credit is claimed, as provided by the statute. The comptroller is also allowing an entity to establish a credit by submitting all required documentation upon the commission's certification of the structure, to accommodate entities that are not subject to the franchise tax and do not file reports and for those entities intending to sell, assign, or allocate the credit to another entity. A credit may not be claimed, sold, assigned, or allocated until the credit is established with the comptroller's office. Paragraph (4) makes clear that determinations on whether items qualify as eligible costs and expenses for purposes of the audited cost report is the responsibility of the certified public accountant pursuant to Tax Code, §171.904(c)(1) and not the comptroller.

Subsection (e) identifies the amount of the credit available pursuant to Tax Code, §171.905.

Subsection (f) explains how an entity claims the credit. Paragraph (1) states that the first report on which an entity may claim

the credit is based on the structure's placed-in-service date. The first report the credit may be claimed is the report based on the accounting period the rehabilitated structure is placed in service. The comptroller is providing a placed-in-service date of January 1, 2014, for structures placed in service between September 1, 2013, and December 31, 2013, because the credit is not effective until January 1, 2015. This allows a full five-year carryforward for the credit associated with these structures. Paragraph (2) requires an entity to file the Texas Franchise Tax Historic Structure Credit Certificate with any report on which a credit is claimed. The comptroller is not requiring an entity to file a copy of the Certificate of Eligibility each time a report is filed because the Certificate of Eligibility has already been submitted to the comptroller by the entity when the entity established the credit. The comptroller instead requires the entity claiming the credit to submit the Texas Franchise Tax Historic Structure Credit Certificate initially issued by the comptroller when the credit was established, indicating the amount of credit available to claim. Once an entity claims a credit on a tax report, the comptroller will reissue the Texas Franchise Tax Historic Structure Credit Certificate indicating the reduced credit amount, if any credit remains. Paragraph (3) allows a combined group to claim the credit for a member entity that has established the credit.

Subsection (g) explains the carryforward of the credit permitted under Tax Code, §171.906. Paragraph (1) establishes that the credit may be carried forward for a period of five years and clarifies when the five-year carryforward begins. The five-year carryforward begins the year following the year after the certified historic structure is placed in service. Paragraph (2) defines a "carryforward" based on Tax Code, §171.906(b). Paragraph (3) provides that the sale, assignment, or allocation of the credit in accordance with subsection (h) does not extend the carryforward period.

Finally, subsection (h) sets out requirements related to the sale, assignment, or allocation of the credit to one or more entities, permitted under Tax Code, §171.908. Paragraph (1) provides that there is no limit to the number of times all or part of a credit may be sold or assigned, subject to any other limitations in this section. Paragraph (2) describes allocation of the credit as provided by Tax Code, §171.908(d). Although Tax Code, §171.908(d) states "notwithstanding the requirements of this subchapter," the comptroller interprets the notification provisions of Tax Code, §171.908(b) to apply to allocations. If the comptroller's office is to administer this credit uniformly and in accordance with the credit amount and carryforward limitations set out in this section, an entity allocating a credit must be required to file a Texas Franchise Tax Sale, Assignment, or Allocation of Historic Structure Credit form, as required in this section for a sale or assignment of a credit. Paragraph (3)(A) and (B)(i) identifies the documents required to be provided to the recipient and submitted to the comptroller upon the sale, assignment or allocation of the credit pursuant to Tax Code, §171.908. Paragraph (3)(B)(ii) also requires the entities to submit the Texas Franchise Tax Historic Structure Credit Certificate. Once the transaction is processed, the comptroller issues the recipient the Texas Franchise Tax Historic Structure Credit Certificate indicating the amount of the credit received and reissues, if any credit remains, the Texas Franchise Tax Historic Structure Credit Certificate to the original owner of the credit. Paragraphs (4) and (5) incorporate the provisions in Tax Code, §171.908(c) regarding the period for which a credit may be claimed.

No comments were received regarding adoption of the amendment.

The new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and also Tax Code, §171.909, which requires the comptroller to adopt rules necessary to implement Tax Code, Chapter 171, Subchapter S.

The new section implements Tax Code, Chapter 171, Subchapter S, Tax Credit for Certified Rehabilitation of Certified Historical Structures.

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 July 17, 2015.

TRD-201502688

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: August 6, 2015

Proposal publication date: June 12, 2015

For further information, please call: (512) 475-0387

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 5. TEXAS BOARD OF PARDONS AND PAROLES

#### CHAPTER 145. PAROLE

##### SUBCHAPTER A. PAROLE PROCESS

###### 37 TAC §§145.1 - 145.3, 145.17

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 145, Subchapter A, §§145.1 - 145.3 and 145.17, concerning parole process. The amended rules are adopted without changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2396). The text of the rules will not be republished.

The amended rules are adopted to update the statutory reference in §145.1, update the language in §145.2 and §145.3, and correct the address for requests for special review in §145.17.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code §§508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides

authority for the discretionary release of offenders on mandatory supervision.

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 July 17, 2015.

TRD-201502694

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: August 6, 2015

Proposal publication date: May 1, 2015

For further information, please call: (512) 406-5388



## SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

### 37 TAC §145.21, §145.27

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 145, Subchapter B, §145.21 and §145.27, concerning terms and conditions of parole. The amended rules are adopted without change to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2397). The text of the rules will not be republished.

The amended rules are adopted to correct the references to the Correctional Institutions Division in §145.21 and to replace "card"

with "certificate" as indicated in Chapter 521 of the Texas Transportation Code.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code §§508.036, 508.0441, and 508.141. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board with the authority to consider and order release on parole.

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 July 17, 2015.

TRD-201502695

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: August 6, 2015

Proposal publication date: May 1, 2015

For further information, please call: (512) 406-5388



# TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

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## Texas Department of Public Safety

### Rule Transfer

Effective September 1, 2015, Senate Bill 1287 will transfer jurisdiction over the Texas Crime Laboratories Accreditation Program from the Texas Department of Public Safety to the Texas Forensic Science Commission (commission). The bill also grants rulemaking authority to the commission. In accordance with the law, 37 TAC §§28.141 - 28.152, concerning crime laboratory accreditation, is transferred from Title 37, Part 1 to Title 37, Part 15 and renumbered as 37 TAC §§651.1 - 651.12.

Please refer to Figure: 37 TAC Chapter 28 to see the complete conversion chart.

TRD-201502702



## Texas Forensic Science Commission

### Rule Transfer

Effective September 1, 2015, Senate Bill 1287 will transfer jurisdiction over the Texas Crime Laboratories Accreditation Program from the Texas Department of Public Safety to the Texas Forensic Science Commission (commission). The bill also grants rulemaking authority to the commission. In accordance with the law, 37 TAC §§28.141 - 28.152, concerning crime laboratory accreditation, is transferred from Title 37, Part 1 to Title 37, Part 15 and renumbered as 37 TAC §§651.1 - 651.12.

Please refer to Figure: 37 TAC Chapter 28 to see the complete conversion chart.

TRD-201502703



Figure: 37 TAC Chapter 28

<b>Current Rules from:</b> <b>Title 37, Part 1</b> <b>Texas Department of Public Safety</b> <b>Chapter 28. DNA, CODIS, Forensic</b> <b>Analysis and Crime Laboratories</b> <b>Subchapter I. Accreditation</b>		<b>Transferred to:</b> <b>Title 37, Part 15</b> <b>Texas Forensic Science</b> <b>Commission</b> <b>Chapter 651. DNA, CODIS, Forensic</b> <b>Analysis and Crime Laboratories</b>	
<b>Section</b>	<b>Heading</b>	<b>Section</b>	<b>Heading</b>
§28.141	Purpose	§651.1	Purpose
§28.142	Definitions	§651.2	Definitions
§28.143	Recognition Process	§651.3	Recognition Process
§28.144	List of Recognized Accrediting Bodies	§651.4	List of Recognized Accrediting Bodies
§28.145	Disciplines and Subdisciplines Subject to DPS Accreditation	§651.5	Disciplines and Subdisciplines Subject to DPS Accreditation
§28.146	Disciplines, Subdisciplines and Procedures to Which Statutory DPS Accreditation Does Not Apply	§651.6	Disciplines, Subdisciplines and Procedures to Which Statutory DPS Accreditation Does Not Apply
§28.147	Disciplines, Subdisciplines and Procedures Exempt from Statutory DPS Accreditation	§651.7	Disciplines, Subdisciplines and Procedures Exempt from Statutory DPS Accreditation
§28.148	Full DPS Accreditation	§651.8	Full DPS Accreditation
§28.149	Provisional DPS Accreditation	§651.9	Provisional DPS Accreditation
§28.150	Accreditation Term	§651.10	Accreditation Term
§28.151	Automatic Withdrawal of DPS Accreditation	§651.11	Automatic Withdrawal of DPS Accreditation
§28.152	Consent to Cooperate with the Texas Forensic Science Commission	§651.12	Consent to Cooperate with the Texas Forensic Science Commission

# 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.

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## Adopted Rule Reviews

Texas Board of Pardons and Paroles

### Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC Part 5, Chapter 145, concerning Parole. The Board amended §§145.1 - 145.3, 145.17, 145.21 and 145.27. The amendments were proposed to update the statutory reference in §145.1, update the language in §145.2 and §145.3, correct the address for requests for special review in §145.17, correct the references to the Correctional Institutions Division in §145.21 and to replace "card" with "certificate" as indicated in Chapter 521 of the Texas Transportation Code.

The assessment of Chapter 145 indicates that the original justifications for these rules continue to exist, and the Board is readopting the rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapter 145.

TRD-201502693

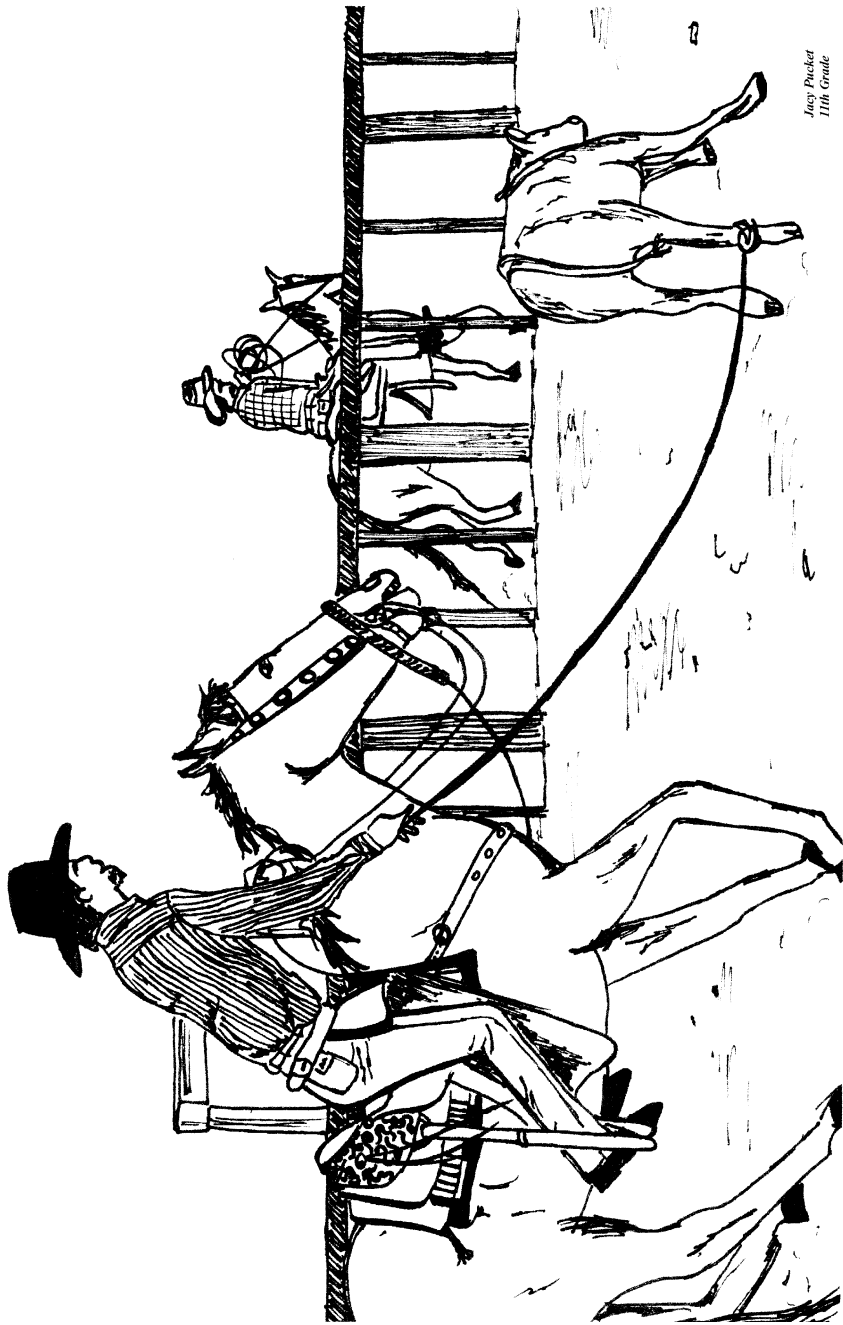
Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: July 17, 2015





Judy Pucker  
11th Grade



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure 19 TAC §109.1001(e)(1)  
 School FIRST - Rating Worksheet Dated August 2015 for Rating Year 2014-2015  
 Fiscal Year Ended June 30, \_\_\_\_\_, or August 31, \_\_\_\_\_  
 County-District # \_\_\_\_\_  
 School District Name: \_\_\_\_\_

Indicator number	School FIRST: 2014-2015 Ratings based on Fiscal Year 2014 data	Select the appropriate box below	
		Pass	Fail
<b>Critical Indicators</b>			
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	Yes	No
<b>Solvency Indicators</b>			
5	Was the school district's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	Points	10
<b>Financial Competence Indicators</b>			
6	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	Points	10
7	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	Points	10
<b>Maximum possible points</b>			<b>30</b>

### School FIRST Determination of Points

Indicator number	10	8	6	4	2	0
5						
ADA Size	Threshold Ratio (based on ADA size)					
10,000 and Above	≤ 0.0855	≤ 0.1105	≤ 0.1355	≤ 0.1605	≤ 0.1855	≤ 0.2105
5,000 to 9,999	> 0.1000	> 0.1250	> 0.1500	> 0.1750	> 0.2000	> 0.2250
1,000 to 4,999	≤ 0.1151	≤ 0.1401	≤ 0.1651	≤ 0.1901	≤ 0.2151	≤ 0.2401
500 to 999	≤ 0.1311	≤ 0.1561	≤ 0.1811	≤ 0.2061	≤ 0.2311	≤ 0.2561
Less than 500	≤ 0.2404	≤ 0.2654	≤ 0.2904	≤ 0.3154	≤ 0.3404	≤ 0.3654
Sparse	≤ 0.3364	≤ 0.3614	≤ 0.3864	≤ 0.4114	≤ 0.4364	≤ 0.4614

Indicator number	10					0
6	Yes					No
7	Yes					No

Determination of School District Rating	
Did the school district fail any of the critical indicators 1 through 4? If so, the school district's rating is F for Substandard Achievement regardless of points earned.	
<b>Determine the rating by the applicable number of points.</b>	<b>Points</b>
<b>P = Pass</b>	16 through 30
<b>F = Substandard Achievement</b> (The school district receives an F if it scores below the minimum passing score, or if it failed any critical indicator 1 through 4, or if the AFR and the data were not complete, or if either the AFR or the data were not submitted on time for FIRST analysis.)	0 through 15

For questions, call Financial Accountability at (512) 463-9095  
 Completed by \_\_\_\_\_

School FIRST - Rating Worksheet Calculations Dated August 2015 for Rating Year 2014-2015		
	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	$(A - B) / B \geq C$ OR $(D + E + F) > 0$ , where A = Number of students in membership in year 5 from base year; B = Number of students in membership in base year; C = Threshold for 5 year percent change in students in membership, which = 10%; D = Total unrestricted net asset balance in the governmental activities column in Exhibit A-1 (Statement of Net Assets) in the annual financial report; E = Accretion of interest for capital appreciation bonds; F = Pension Expense and Net Pension Liability (NPL), as applicable
5	Was the school district's administrative cost ratio equal to or less than the threshold ratio?	$A > B$ , where A = Acceptable administrative cost ratio; B = Administrative cost ratio of the school district, which = (sum of amounts for function codes 21 and 41) / (sum of amounts for function codes 11, 12, 13, and 31) *Includes object codes 61XX-64XX in fund code 199, except 6144
6	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	$(A / B) < C$ , where A = Sum of the absolute values of all differences in expenditures (determined by function) between Exhibit C-2 (Statement of Revenues, Expenditures, and Changes in Fund Balance) and PEIMS, by function in Fund Code 199; B = Sum of expenditures in PEIMS by function in fund code 199; C = Threshold level variance, which = 3%
7	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved

Figure 19 TAC §109.1001(6)(C)  
 School FIRST - Rating Worksheet Dated August 2015 for Rating Year 2015-2016  
 Fiscal Year Ended June 30, \_\_\_\_\_, or August 31, \_\_\_\_\_  
 County-District # \_\_\_\_\_  
 School District Name \_\_\_\_\_

<b>School FIRST: 2015-2016 Rating based on Fiscal Year 2015 data</b>		Select the appropriate box below	
Indicator number		Pass	Fail
<b>Critical Indicators</b>			
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year and date of June 30 or August 31, respectively?	Yes	No
2	Review the AFR for an unmodified opinion and material weaknesses. The school district must pass 2.A to pass this indicator. The school district fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A. and 2.B.		
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	Yes	No
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies?	Yes	No
5	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	Yes	No
<b>Solvency Indicators</b>			
6	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)? (See ranges below.)	10	
7	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt? (See ranges below.)	10	
8	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.) (See ranges below.)	10	
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	10	
10	Was the debt service coverage ratio sufficient to meet the required debt service? (See ranges below.)	10	
11	Was the school district's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10	
12	Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	10	
<b>Financial Competence Indicators</b>			
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 2 percent of all expenditures by function?	10	
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10	
15	Did the school district not receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	10	
		<b>Maximum possible points</b>	
		100	

School FIRST Determination of Points									
Indicator number	10	8	75	60	45	30	15	0	0%
6	> 90	< 90	≥ 75	< 60	≥ 45	< 30	≥ 15	< 0	< 0%
7	> 3	< 3	≥ 2.5	< 2	≥ 1.5	< 1	≥ 0.5	< 0	< 0%
8	> 0.60	< 0.60	≥ 0.70	< 0.80	≥ 0.90	< 1.00	≥ 1.00	< 1.00	< 0%
9	> 0%	< 0%	≥ 1.15	< 1.10	≥ 1.05	< 1.00	≥ 1.00	< 1.00	< 0%
10	> 1.20	< 1.20	≥ 1.15	< 1.10	≥ 1.05	< 1.00	≥ 1.00	< 1.00	< 0%
10 points are awarded if the school district has at least 60 days cash on hand as determined in indicator #6.									
Indicator number	10	8	6	4	2	0			
11	Threshold Ratio (based on ADA size)								
ADA Size									
10,000 and Above	> 0.0855	< 0.0855	≥ 0.1105	< 0.1355	≥ 0.1605	< 0.1855	≥ 0.2105	< 0.2355	< 0.2605
5,000 to 9,999	> 0.1000	< 0.1000	≥ 0.1250	< 0.1500	≥ 0.1750	< 0.2000	≥ 0.2250	< 0.2500	< 0.2750
1,000 to 4,999	> 0.1151	< 0.1151	≥ 0.1401	< 0.1651	≥ 0.1901	< 0.2151	≥ 0.2401	< 0.2651	< 0.2901
\$00 to 999	> 0.1311	< 0.1311	≥ 0.1561	< 0.1811	≥ 0.2061	< 0.2311	≥ 0.2561	< 0.2811	< 0.3061
Less than \$00	> 0.2404	< 0.2404	≥ 0.2654	< 0.2904	≥ 0.3154	< 0.3404	≥ 0.3654	< 0.3904	< 0.4154
Sparsely	> 0.3364	< 0.3364	≥ 0.3614	< 0.3864	≥ 0.4114	< 0.4364	≥ 0.4614	< 0.4864	< 0.5114

Determination of School District Rating		Points
Did the school district fall any of the critical indicators 1, 3, 4, 5, or 2.A? If so, the school district's rating is F for Substandard Achievement regardless of points earned.		70 through 100
Determine the rating by the applicable number of points.		50 through 69
A = Superior		31 through 49
B = Above Standard		0 through 30
C = Meets Standard		
F = Substandard Achievement (The school district receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 3, 4, 5, or 2.A, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for PINSY analysis.)		

For questions, call Financial Accountability at (512) 463-9095  
 Completed by \_\_\_\_\_

School FIRST - Rating Worksheet Calculations Dated August 2015 for Rating Year 2015-2016		
	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Review the AFR for an unmodified opinion and material weaknesses. The school district must pass 2.A to pass this indicator. The school district fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A and 2.B.	The school district must pass 2.A
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the TRS and TWC are considered timely if a warrant hold that was issued in connection to the untimely payment was cleared within 30 days from the date the warrant hold was issued.)	For TRS and TWC, if not cleared within 30 days. For the IRS and other governmental agencies there is no calculation involved. The agency will use the AFR, warrant holds, information from the IRS and other sources to make a determinations of timely payments.
5	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	$(A - B) / B > C$ OR $(D + E + F) > 0$ , where A = Number of students in membership in year 5 from base year; B = Number of students in membership in base year; C = Threshold for 5 year percent change in students in membership, which = 10%; D = Total unrestricted net asset balance in the governmental activities column in Exhibit A-1 (Statement of Net Assets) in the annual financial report; E = Accretion of interest for capital appreciation bonds; F = Pension Expense and Net Pension Liability (NPL), as applicable
6	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)?	$[(A + B) / (C - D - E)] * 365$ , where A = Cash & Equivalents; B = Current Investments; C = Total Expenditures; D = Facilities Acquisition and Construction E = Pension Expense and NPL, as applicable
7	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt?	$A / B$ , where A = Current Assets B = Current Liabilities

8	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	$A - B / C$ , where A = Long Term Liabilities B = Pension Expense and NPL, as applicable C = Total Assets
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	$[A / (B - C - D) - 1] > 0$ , where A = Total Revenue B = Total Expenditures C = Facilities Acquisition and Construction D = Pension Expense and NPL, as applicable
10	Was the debt service coverage ratio sufficient to meet the required debt service?	$(A - B + C + D) / C$ , where A = Total Revenue; B = Total Expenditures; C = Debt Service (function codes 71, 72, and 73) D = Fund Code 599 (Debt Service fund balance) E = Pension Expense and NPL, as applicable
11	Was the school district's administrative cost ratio equal to or less than the threshold ratio?	$A > B$ , where A = Acceptable administrative cost ratio; B = Administrative cost ratio of the school district, which = (sum of amounts for function codes 21 and 41) / (sum of amounts for function codes 11, 12, 13, and 31) *Includes object codes 61XX-64XX in fund code 199, except 6144
12	Did the school district <b>not</b> have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	$(A / B) - 1 > -0.15$ or $C - D > 0$ , where A = Student to Staff ratio in the year under review; B = Student to Staff ratio 3 years prior to the year under review; C = Enrollment in year under review; D = Enrollment 3 years prior to the year under review
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	$(A / B) < C$ , where A = Sum of the absolute values of all differences in expenditures (determined by function) between Exhibit C-2 (Statement of Revenues, Expenditures, and Changes in Fund Balance) and PEIMS, by function in Fund Code 199; B = Sum of expenditures in PEIMS by function in fund code 199; C = Threshold level variance, which = 3%
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No Calculation Involved
15	Did the school district <b>not</b> receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	No Calculation Involved



Figure 19 TAC §109.1001(e)(3)  
 School FIRST - Rating Worksheet Dated August 2015 for Rating Year 2016-2017  
 Fiscal Year Ended June 30, \_\_\_\_\_ or August 31, \_\_\_\_\_  
 County-District # \_\_\_\_\_  
 School District Name \_\_\_\_\_

<b>School FIRST: 2016-2017 Ratings based on Fiscal Year 2016 data</b>		Select the appropriate box below	
Indicator number		Pass	Fail
<b>Critical Indicators</b>			
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Review the AFR for an unmodified opinion and material weaknesses. The school district must pass 2.A to pass this indicator. The school district fails indicator number 2 if it responds "No" to indicator 2.A, or to both indicators 2.A and 2.B.		
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	Yes	No
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies?	Yes	No
5	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	Yes	No
<b>Solvency Indicators</b>			
6	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)? (See ranges below.)	Points	
		10	
7	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt? (See ranges below.)	Points	
		10	
8	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.) (See ranges below.)	Points	
		10	
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	Points	
		10	
10	Was the debt service coverage ratio sufficient to meet the required debt service? (See ranges below.)	Points	
		10	
11	Was the school district's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	Points	
		10	
12	Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	Points	
		10	
<b>Financial Competence Indicators</b>			
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	Points	
		10	
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	Points	
		10	
15	Did the school district not receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	Points	
		10	

<b>Maximum possible points</b>	100
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School FIRST Determination of Points										
Indicator number	10	8	6	4	2	0				
6	≥ 90	≥ 75	< 75 ≥ 60	≥ 45	< 45	< 30			0	
7	≥ 3	≥ 2.5	< 2.5 ≥ 2	≥ 1.5	< 1.5	< 1			1	
8	≥ 0.60	≥ 0.70	> 0.70 ≤ 0.80	≥ 0.80	< 0.90	> 1.00			1.00	
9	≥ 0%		10 points are awarded if the school district has at least 60 days cash on hand as determined in indicator #6.							0%
10	≥ 1.20	≥ 1.15	< 1.15 ≥ 1.10	≥ 1.10	< 1.05	< 1.00			1.00	
Indicator number	10	8	6	4	2	0				
11										
ADA Size	Threshold Ratio (based on ADA size)									
10,000 and Above	≤ 0.0855	≤ 0.0855	> 0.1105 ≤ 0.1355	> 0.1355 ≤ 0.1605	> 0.1605 ≤ 0.1855	> 0.1855			0.1855	
5,000 to 9,999	≤ 0.1000	≤ 0.1000	> 0.1250 ≤ 0.1500	> 0.1500 ≤ 0.1750	> 0.1750 ≤ 0.2000	> 0.2000			0.2000	
1,000 to 4,999	≤ 0.1151	≤ 0.1151	> 0.1401 ≤ 0.1651	> 0.1651 ≤ 0.1901	> 0.1901 ≤ 0.2151	> 0.2151			0.2151	
500 to 999	≤ 0.1311	≤ 0.1311	> 0.1561 ≤ 0.1811	> 0.1811 ≤ 0.2061	> 0.2061 ≤ 0.2311	> 0.2311			0.2311	
Less than 500	≤ 0.2404	≤ 0.2404	> 0.2654 ≤ 0.2904	> 0.2904 ≤ 0.3154	> 0.3154 ≤ 0.3404	> 0.3404			0.3404	
Sparse	≤ 0.3364	≤ 0.3364	> 0.3614 ≤ 0.3864	> 0.3864 ≤ 0.4114	> 0.4114 ≤ 0.4364	> 0.4364			0.4364	
Indicator number	10								0	
12	Yes								No	
13	Yes								No	
14	Yes								No	
15	Yes								No	

Determination of School District Rating		Points
Did the school district fail any of the critical indicators 1, 3, 4, 5, or 2.A? If so, the school district's rating is F for Substandard Achievement regardless of points earned.		
Determine rating by applicable number of points.		
A = Superior		90 through 100
B = Above Standard		80 through 89
C = Meets Standard		60 through 79
F = Substandard Achievement (The school district receives an F if it scores below the minimum passing score. If it failed any critical indicator 1, 3, 4, 5, or 2.A, if the AEP or the data were not both complete, or if either the AEP or the data were not submitted on time for PJRST analysis.)		0 through 59

For questions, call Financial Accountability at (512) 463-9095  
 Completed by \_\_\_\_\_

School FIRST - Rating Worksheet Calculations Dated August 2015 for Rating Year 2016-2017		
	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Review the AFR for an unmodified opinion and material weaknesses. The school district must pass 2.A to pass this indicator. The school district fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A and 2.B.	The school district must pass 2.A
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the TRS and TWC are considered timely if a warrant hold that was issued in connection to the untimely payment was cleared within 30 days from the date the warrant hold was issued.)	For TRS and TWC, if not cleared within 30 days. For the IRS and other governmental agencies there is no calculation involved. The agency will use the AFR, warrant holds, information from the IRS and other sources to make a determinations of timely payments.
5	Was the total unrestricted net asset balance (Net of the accretion of interest for capital appreciation bonds) in the governmental activities column in the Statement of Net Assets greater than zero? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	$(A - B) / B > C$ OR $(D + E + F) > 0$ , where A = Number of students in membership in year 5 from base year; B = Number of students in membership in base year; C = Threshold for 5 year percent change in students in membership, which = 10%; D = Total unrestricted net asset balance in the governmental activities column in Exhibit A-1 (Statement of Net Assets) in the annual financial report; E = Accretion of interest for capital appreciation bonds; F = Pension Expense and Net Pension Liability (NPL), as applicable
6	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)?	$[(A + B) / (C - D - E)] * 365$ , where A = Cash & Equivalents; B = Current Investments; C = Total Expenditures; D = Facilities Acquisition and Construction E = Pension Expense and NPL, as applicable
7	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt?	$A / B$ , where A = Current Assets B = Current Liabilities

8	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's change of students in membership over 5 years was 10 percent or more, then the school district passes this indicator.)	<u>A - B / C, where</u> A = Long Term Liabilities B = Pension Expense and NPL, as applicable C = Total Assets
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	<u>[A / (B - C - D) - 1] &gt; 0, where</u> A = Total Revenue B = Total Expenditures C = Facilities Acquisition and Construction D = Pension Expense and NPL, as applicable
10	Was the debt service coverage ratio sufficient to meet the required debt service?	<u>(A - B + C + D) / C, where</u> A = Total Revenue; B = Total Expenditures; C = Debt Service (function codes 71, 72, and 73) D = Fund Code 599 (Debt Service fund balance) E = Pension Expense and NPL, as applicable
11	Was the school district's administrative cost ratio equal to or less than the threshold ratio?	<u>A &gt; B, where</u> A = Acceptable administrative cost ratio; B = Administrative cost ratio of the school district, which = (sum of amounts for function codes 21 and 41) / (sum of amounts for function codes 11, 12, 13, and 31) *Includes object codes 61XX-64XX in fund code 199, except 6144
12	Did the school district <b>not</b> have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	<u>(A / B) - 1 &gt; -0.15 or C - D &gt; 0, where</u> A = Student to Staff ratio in the year under review; B = Student to Staff ratio 3 years prior to the year under review; C = Enrollment in year under review; D = Enrollment 3 years prior to the year under review
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	<u>(A / B) &lt; C, where</u> A = Sum of the absolute values of all differences in expenditures (determined by function) between Exhibit C-2 (Statement of Revenues, Expenditures, and Changes in Fund Balance) and PEIMS, by function in Fund Code 199; B = Sum of expenditures in PEIMS by function in fund code 199; C = Threshold level variance, which = 3%
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No Calculation Involved
15	Did the school district <b>not</b> receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	No Calculation Involved

Figure: 19 TAC §109.1001(f)(1)  
 Charter FIRST - Rating Worksheet Dated August 2015 for Rating Year 2014-2015  
 Fiscal Year Ended June 30, \_\_\_\_\_, or August 31, \_\_\_\_\_  
 County-District # \_\_\_\_\_  
 Charter School Name: \_\_\_\_\_

Indicator number	Critical Indicators		Select the appropriate box below	
	Pass	Fail	Pass	Fail
<b>Charter FIRST: 2014-2015 Ratings based on Fiscal Year 2014 data</b>				
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?		Yes	No
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)		Yes	No
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)		Yes	No
4	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.)		Yes	No
<b>Solvency Indicators</b>				
5	Was the charter school's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)		Points	10
<b>Financial Competence Indicators</b>				
6	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function?		Points	10
7	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)		Points	10
			<b>Maximum possible points</b>	
			30	

Charter FIRST Determination of Points										
Indicator number	10	8	6	4	2	0				
5	Threshold Ratio (based on ADA size)									0
ADA Size										
1,000 and Above	≤ 0.1401	> 0.1401	≤ 0.1651	> 0.1651	≤ 0.1901	> 0.1901	≤ 0.2151	> 0.2151	≤ 0.2401	> 0.2401
500 to 999	≤ 0.1561	> 0.1561	≤ 0.1811	> 0.1811	≤ 0.2061	> 0.2061	≤ 0.2311	> 0.2311	≤ 0.2561	> 0.2561
Less than 500	≤ 0.2645	> 0.2645	≤ 0.2895	> 0.2895	≤ 0.3145	> 0.3145	≤ 0.3395	> 0.3395	≤ 0.3645	> 0.3645

Indicator number	10								0
6	Yes								No
7	Yes								No

Determination of Charter School Rating	
Did the charter school fail any of the critical indicators 1 through 4? If so, then the charter school's rating is F for Substandard Achievement, regardless of points earned.	
<b>Determine the rating by the applicable number of points.</b>	<b>Points</b>
<b>P = Pass</b>	16 through 30
<b>F = Substandard Achievement</b> (The charter school receives an F if it scores below the minimum passing score, or if it failed any critical indicator 1 through 4, or if the AFR and the data were not complete, or if either the AFR or the data were not submitted on time for FIRST analysis.)	0 through 15

For questions, call Financial Accountability at (512) 463-9095  
 Completed by \_\_\_\_\_

Charter FIRST - Rating Worksheet Calculations Dated August 2015 for Rating Year 2014-2015		
	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.)	$A + B > C$ OR $\frac{((D - E) / E) \times 100}{100} \geq F$ , where A = Total net asset balance in the statement of financial position in the annual financial report; B = Pension Expense, Other Post Employment Benefits (OPEB), and Net Pension Liability (NPL), as applicable C = Net assets threshold, which = 0; D = Number of students in membership in year 5 from base year; E = Number of students in membership in base year; F = Threshold for percent change in students in membership, which = 10%
5	Was the charter school's administrative cost ratio equal to or less than the threshold ratio?	$(A / B) < \text{threshold based on CS size, where}$ A = Sum of amounts for function codes 21 and 41; B = Sum of amounts for function codes 11, 12, 13, and 31 <b>*Includes object codes 61XX-64XX in fund codes 199 and 420</b>
6	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function?	$A / B < C$ , where A = Sum of the absolute values of all differences in expenses (determined by function) between the Statement of Activities and PEIMS; B = Sum of expenses for all expenses presented in the Statement of Activities; C = Threshold for percentage of data variance, which = 3%
7	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved

<b>Charter FIRST: 2015-2016 Ratings based on Fiscal Year 2015 data</b>		Select the appropriate box below	
Indicator number	Critical Indicators	Pass	Fail
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Review the AFR for an unmodified opinion and material weaknesses. The charter school must pass 2.A to pass this indicator. The charter school fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A and 2.B.		
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
2.B	Did the external independent auditor report that the AFR was free of any instances of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	Yes	No
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the charter school make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies?	Yes	No
5	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.)	Yes	No
<b>Solvency Indicators</b>			
6	Was the number of days of cash on hand and current investments for the charter school sufficient to cover operating expenses? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded. (See ranges below.)	10	Points
7	Was the measure of current assets to current liabilities ratio for the charter school sufficient to cover short-term debt? (See ranges below.)	10	Points
8	Was the ratio of long-term liabilities to total assets for the charter school sufficient to support long-term solvency? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.) (See ranges below.)	10	Points
9	Did the charter school's revenues equal or exceed expenses, excluding depreciation? If not, was the charter school's number of days of cash on hand greater than or equal to 40 days? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	10	Points
10	Was the debt service coverage ratio sufficient to meet the required debt service? (See ranges below.)	10	Points
11	Was the charter school's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10	Points
12	Did the charter school not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)	10	Points
<b>Financial Competence Indicators</b>			
13	Did the comparison of Public Education Information Management System (PEIMS) data to the information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function?	10	Points
14	Did the external independent auditor indicate the AFR was free of any instances of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10	Points
15	Did the charter school not receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	10	Points

<b>Maximum possible points</b>	100
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**Charter FIRST Determination of points**

Indicator number	10	8	6	4	2	0
6	> 60	≥ 50	< 40	< 30	< 20	< 20
7	> 2	≥ 1.75	< 1.5	< 1.25	< 1	< 1
8	> 0.60	≥ 0.70	< 0.80	< 0.90	< 1.00	< 1.00
9	> 0%	≥ 1.20	< 1.15	< 1.10	< 1.05	< 1.00
10	> 1.20	> 1.20	< 1.15	< 1.10	< 1.05	< 1.00

10 points are awarded if the charter school has at least 40 days cash on hand as determined in indicator #6.

**Charter FIRST Determination of Points**

Indicator number	8	6	4	2	0
11					
ADA Size					
1,000 and Above	> 0.1401	≥ 0.1651	< 0.1901	< 0.2151	< 0.2401
500 to 999	> 0.1561	≥ 0.1811	< 0.2061	< 0.2311	< 0.2561
Less than 500	> 0.2645	≥ 0.2895	< 0.3145	< 0.3395	< 0.3645

Threshold Ratio (based on ADA size)

Indicator number	10	8	6	4	2	0
12	Yes					No
13	Yes					No
14	Yes					No
15	Yes					No

Determination of Charter School Rating		Points
<p><b>Determine rating by applicable number of points.</b></p> <p><b>A = Superior</b> 70 through 100</p> <p><b>B = Above Standard</b> 50 through 69</p> <p><b>C = Meets Standard</b> 31 through 49</p> <p><b>F = Substandard Achievement</b> (The charter school receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 3, 4, 5, or 2.A, if the APK or the data were not both complete, or if either the APK or the data were not submitted on time for FIRST analysis.) 0 through 30</p>		

For questions, call Financial Accountability at (512) 465-2095  
Completed by \_\_\_\_\_

Charter FIRST - Rating Worksheet Calculations Dated August 2015 for Rating Year 2015-2016		
	Indicator	Calculation Defined
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Review the AFR for an unmodified opinion and material weaknesses. The charter school must pass 2.A to pass this indicator. The charter school fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A and 2.B.	The charter school must pass 2.A
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Did the charter school make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the TRS and TWC are considered timely if a warrant hold that was issued in connection to the untimely payment was cleared within 30 days from the date the warrant hold was issued.)	For TRS and TWC, if not cleared within 30 days. For the IRS and other governmental agencies there is no calculation involved. The agency will use the AFR, warrant holds, information from the IRS and other sources to make a determinations of timely payments.
5	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.)	$A + B > C$ OR $((D - E) / E) \times 100 \geq F$ , where A = Total net asset balance in the statement of financial position in the annual financial report; B = Pension Expense, Other Post Employment Benefits (OPEB), and Net Pension Liability (NPL), as applicable C = Net assets threshold, which = 0; D = Number of students in membership in year 5 from base year; E = Number of students in membership in base year; F = Threshold for percent change in students in membership, which = 10%
6	Was the number of days of cash on hand and current investments for the charter school sufficient to cover operating expenses? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	$[(A + B) / (C - D - E)] * 365$ , where A = Cash & Equivalents; B = Current Investments; C = Total Expenditures; D = Depreciation Expense; E = Pension Expense, OPEB, and NPL, as applicable
7	Was the measure of current assets to current liabilities ratio for the charter school sufficient to cover short-term debt?	$A / B$ , where A = Current Assets; B = Current Liabilities

8	Was the ratio of long-term liabilities to total assets for the charter school sufficient to support long-term solvency? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.)	$A - B / C$ , where A = Long Term Liabilities; B = Pension Expense, OPEB, and NPL, as applicable C = Total Assets
9	Did the charter school's revenues equal or exceed expenses, excluding depreciation? If not, was the charter school's number of days of cash on hand greater than or equal to 40 days? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	$[A / (B - C - D) - 1] > 0$ , where A = Total Revenue; B = Total Expenses; C = Depreciation; D = Pension Expense, OPEB, and NPL, as applicable
10	Was the debt service coverage ratio sufficient to meet the required debt service?	$(A - B + C + D - E) / D$ , where A = Total Revenue; B = Total Expenses; C = Depreciation; D = Debt Service (interest and principal payments) E = Pension Expense, OPEB, and NPL, as applicable
11	Was the charter school's administrative cost ratio equal to or less than the threshold ratio?	$(A / B) < \text{threshold based on CS size}$ , where A = Sum of amounts for function codes 21 and 41; B = Sum of amounts for function codes 11, 12, 13, and 31 <b>*Includes object codes 61XX-64XX in fund codes 199 and 420</b>
12	Did the charter school <b>not</b> have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)	$(A / B) - 1 > -0.15$ or $C - D > 0$ , where A = Student to Staff ratio in the year under review; B = Student to Staff ratio 3 years prior to the year under review; C = Enrollment in the year under review; D = Enrollment 3 years prior to the year under review
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function?	$A / B < C$ , where A = Sum of the absolute values of all differences in expenses (determined by function) between the Statement of Activities and PEIMS; B = Sum of expenses for all expenses presented in the Statement of Activities; C = Threshold for percentage of data variance, which = 3%
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No Calculation Involved
15	Did the charter school <b>not</b> receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	No Calculation Involved

Figure 19 TAC §109.1001(0)(3)  
 Charter FIRST - Rating Worksheet Dated August 2015 for Rating Year: 2016-2017  
 Fiscal Year Ended June 30, \_\_\_\_\_ or August 31, \_\_\_\_\_  
 County-District # \_\_\_\_\_  
 Charter School Name: \_\_\_\_\_

Indicator number	Charter FIRST: 2016-2017 Ratings based on Fiscal Year 2016 data	Select the appropriate box below	
		Pass	Fail
<b>Critical Indicators</b>			
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	Yes	No
2	Review the AFR for an unmodified opinion and material weaknesses. The charter school must pass 2.A to pass this indicator. The charter school fails indicator number 2 if it responds "No" to indicator 2.A, or to both indicators 2.A and 2.B.		
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	Yes	No
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weaknesses.)	Yes	No
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note, even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	Yes	No
4	Did the charter school make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies?	Yes	No
5	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.)	Yes	No
<b>Solvency Indicators</b>			
6	Was the number of days of cash on hand and current investments for the charter school sufficient to cover operating expenses? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded. (See ranges below.)	10	
7	Was the measure of current assets to current liabilities ratio for the charter school sufficient to cover short-term debt? (See ranges below.)	10	
8	Was the ratio of long-term liabilities to total assets for the charter school sufficient to support long-term solvency? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.) (See ranges below.)	10	
9	Did the charter school's revenues equal or exceed expenses, excluding depreciation? If not, was the charter school's number of days of cash on hand greater than or equal to 40 days? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	10	
10	Was the debt service coverage ratio sufficient to meet the required debt service? (See ranges below.)	10	
11	Was the charter school's administrative cost ratio equal to or less than the threshold ratio? (See ranges below.)	10	
12	Did the charter school not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)	10	
<b>Financial Competence Indicators</b>			
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function?	10	
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	10	
15	Did the charter school not receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	10	
		Maximum possible points	
		100	

Charter FIRST Determination of Points									
Indicator number	10	8	6	4	2	0			
6	≥ 60	≥ 50	≥ 40	≥ 30	≥ 20	≥ 10			
7	≥ 2	≥ 1.75	≥ 1.5	≥ 1.25	≥ 1	≥ 0.75			
8	≤ 0.60	≤ 0.70	≤ 0.80	≤ 0.90	≤ 1.00	≤ 1.10			
9	≥ 0%	10 points are awarded if the charter school has at least 40 days cash on hand as determined in indicator #6.							
10	≥ 1.20	≥ 1.15	≥ 1.10	≥ 1.05	≥ 1.00	≥ 0.95			

Charter FIRST Determination of Points									
Indicator number	8	6	4	2	0				
11	Threshold Ratio (based on ADA size)								
ADA Size									
1,000 and Above	≤ 0.1401	≤ 0.1651	≤ 0.1901	≤ 0.2151	≤ 0.2401	≤ 0.2651			
500 to 999	≤ 0.1561	≤ 0.1811	≤ 0.2061	≤ 0.2311	≤ 0.2561	≤ 0.2811			
Less than 500	≤ 0.2645	≤ 0.2895	≤ 0.3145	≤ 0.3395	≤ 0.3645	≤ 0.3895			

Indicator number	10	8	6	4	2	0
12	Yes					No
13	Yes					No
14	Yes					No
15	Yes					No

Determination of Charter School Rating	
Did the charter school fail any of the critical indicators 1, 3, 4, 5, or 2, A? If so, the charter school's rating is F for Substandard Achievement, regardless of points earned.	
Determine rating by applicable number of points.	Points
A = Superior	90 through 100
B = Above Standard	80 through 89
C = Meets Standard	60 through 79
F = Substandard Achievement (The charter school receives an F if its score below the minimum passing score, if it failed any critical indicator 1, 3, 4, 5, or 2, A; if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.)	0 through 59

For questions, call Financial Accountability at (512) 463-9095.  
 Completed by \_\_\_\_\_

**Charter FIRST - Rating Worksheet Calculations Dated August 2015 for Rating Year 2016-2017**

	<b>Indicator</b>	<b>Calculation Defined</b>
1	Was the complete annual financial report (AFR) and charter school financial data submitted to TEA within 30 days of the November 27 or January 28 deadline depending on the charter school's fiscal year end date of June 30 or August 31, respectively?	No Calculation Involved
2	Review the AFR for an unmodified opinion and material weaknesses. The charter school must pass 2.A to pass this indicator. The charter school fails indicator number 2 if it responds "No" to indicator 2.A. or to both indicators 2.A and 2.B.	The charter school must pass 2.A
2.A	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	No Calculation Involved
2.B	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	No Calculation Involved
3	Was the charter school in compliance with the payment terms of all debt agreements at fiscal year end? (If the charter school was in default in a prior fiscal year, an exemption applies in following years if the charter school is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	No Calculation Involved
4	Did the charter school make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (Payments to the TRS and TWC are considered timely if a warrant hold that was issued in connection to the untimely payment was cleared within 30 days from the date the warrant hold was issued.)	For TRS and TWC, if not cleared within 30 days. For the IRS and other governmental agencies there is no calculation involved. The agency will use the AFR, warrant holds, information from the IRS and other sources to make a determinations of timely payments.
5	Was the total net asset balance in the Statement of Financial Position for the charter school greater than zero? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.)	$A + B > C$ OR $\left(\frac{D - E}{E}\right) \times 100 \geq F$ , where A = Total net asset balance in the statement of financial position in the annual financial report; B = Pension Expense, Other Post Employment Benefits (OPEB), and Net Pension Liability (NPL), as applicable C = Net assets threshold, which = 0; D = Number of students in membership in year 5 from base year; E = Number of students in membership in base year; F = Threshold for percent change in students in membership, which = 10%
6	Was the number of days of cash on hand and current investments for the charter school sufficient to cover operating expenses? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	$\frac{[A + B]}{C - D - E} \times 365$ , where A = Cash & Equivalents; B = Current Investments; C = Total Expenditures; D = Depreciation Expense; E = Pension Expense, OPEB, and NPL, as applicable
7	Was the measure of current assets to current liabilities ratio for the charter school sufficient to cover short-term debt?	$A / B$ , where A = Current Assets; B = Current Liabilities

8	Was the ratio of long-term liabilities to total assets for the charter school sufficient to support long-term solvency? (If the charter school's change of students in membership over 5 years was 10 percent or more, then the charter school passes this indicator.) (New charter schools that have a negative net asset balance will pass this indicator if they have a 10 percent growth in students year over year until it completes its fifth year of operations. After the fifth year of operations, the calculation changes to the 10 percent increase in 5 years.)	$A - B / C$ , where A = Long Term Liabilities; B = Pension Expense, OPEB, and NPL, as applicable C = Total Assets
9	Did the charter school's revenues equal or exceed expenses, excluding depreciation? If not, was the charter school's number of days of cash on hand greater than or equal to 40 days? The calculation will use expenses, excluding depreciation. For government charter schools, pension expense will be excluded.	$[A / (B - C - D) - 1] > 0$ , where A = Total Revenue; B = Total Expenses; C = Depreciation; D = Pension Expense, OPEB, and NPL, as applicable
10	Was the debt service coverage ratio sufficient to meet the required debt service?	$(A - B + C + D - E) / D$ , where A = Total Revenue; B = Total Expenses; C = Depreciation; D = Debt Service (interest and principal payments) E = Pension Expense, OPEB, and NPL, as applicable
11	Was the charter school's administrative cost ratio equal to or less than the threshold ratio?	$(A / B) < \text{threshold based on CS size}$ , where A = Sum of amounts for function codes 21 and 41; B = Sum of amounts for function codes 11, 12, 13, and 31 <b>*Includes object codes 61XX-64XX in fund codes 199 and 420</b>
12	Did the charter school <b>not</b> have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the charter school will automatically pass this indicator.)	$(A / B) - 1 > -0.15$ or $C - D > 0$ , where A = Student to Staff ratio in the year under review; B = Student to Staff ratio 3 years prior to the year under review; C = Enrollment in the year under review; D = Enrollment 3 years prior to the year under review
13	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the charter school's AFR result in a total variance of less than 3 percent of all expenses by function?	$A / B < C$ , where A = Sum of the absolute values of all differences in expenses (determined by function) between the Statement of Activities and PEIMS; B = Sum of expenses for all expenses presented in the Statement of Activities; C = Threshold for percentage of data variance, which = 3%
14	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	No Calculation Involved
15	Did the charter school <b>not</b> receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds as a result of a financial hardship?	No Calculation Involved





# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Department of Aging and Disability Services

### Correction of Error

The Department of Aging and Disability Services (DADS) adopted new 40 TAC §17.102 as part of new Chapter 17, concerning Preadmission Screening and Resident Review (PASRR), in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4365). DADS adopted §17.102, concerning definitions, with changes to the proposal and republished the rule text. On page 4368, second column, §17.102(9), the definition of "DD--Developmental disability," included the word "conditions" in error. The corrected paragraph reads as follows:

"(9) DD--Developmental disability. A disability that meets the criteria described in the definition of "persons with related conditions" in Code of Federal Regulations (CFR) Title 42 §435.1010."

TRD-201502687



Governmental Body	Exempted from Rule Section	Authorized Charges
Guadalupe Appraisal District	1 TAC §70.3(h)(3)	\$5.53 per clock hour for client/server time
Wise County Appraisal District	1 TAC §70.3(d)(1), (h)(3)	\$45.43 for a certified appraisal roll

TRD-201502691  
Amanda Crawford  
General Counsel  
Office of the Attorney General  
Filed: July 17, 2015



## Capital Area Rural Transportation System

### Public Notice: Request for Proposal for Architect/Engineering Firm

Capital Area Rural Transportation System (CARTS) is soliciting proposals for the selection of an Architect/Engineering firm to provide professional services for the design and development of an Operational Facility to be located at the CARTS Tucker Hill Lane (THL) Operations Complex in Cedar Creek, Texas.

The Request for Proposal (RFP) will be available in digital format beginning at 2:00 p.m., Thursday, July 30th, 2015, at the CARTS Headquarters, located at 2010 E. 6th, Austin, Texas 78702-6050 or by going to our website at <http://www.ridecarts.com/about/procurement>.

TRD-201502706  
Dave Marsh  
General Manager  
Capital Area Rural Transportation System  
Filed: July 20, 2015

## Office of the Attorney General

### Fiscal Year 2015 Exemptions Granted

Government Code §552.262(a) authorizes the attorney general to adopt cost rules for governmental bodies to use in determining charges for providing public information under the Public Information Act, Chapter 552 of the Government Code. The attorney general's cost rules are found at 1 TAC §§70.1 - 70.12. Government Code §552.262(c) permits a governmental body to request that it be exempt from all or part of the attorney general's cost rules. Government Code §552.262(d) requires the attorney general to publish annually a list of the governmental bodies that are granted exemptions from the attorney general's cost rules and authorized to adopt modified rules for determining charges for providing public information. Therefore, the attorney general publishes the following table of exemptions granted for Fiscal Year 2015 (September 1, 2014, through August 31, 2015):



### Public Notice: Request for Proposal for Architect/Engineering Firm

Capital Area Rural Transportation System (CARTS) is soliciting proposals for the selection of an Architect/Engineering firm to provide professional services for the design and development of an intermodal transit facility to be located in Elgin, Texas.

The Request for Proposal (RFP) will be available in digital format beginning at 2:00 p.m., Thursday, July 30th, 2015, at the CARTS Headquarters, located at 2010 E 6th, Austin, Texas 78702-6050 or by going to our website at <http://www.ridecarts.com/about/procurement>.

TRD-201502708  
Dave Marsh  
General Manager  
Capital Area Rural Transportation System  
Filed: July 20, 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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/27/15 - 08/02/15 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 07/27/15 - 08/02/15 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/15 - 08/31/15 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 08/01/15 - 08/31/15 is 5.00% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201502717

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 21, 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 31, 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 31, 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: 242 BUSINESS INCORPORATED dba Time Mart 16; DOCKET NUMBER: 2015-0521-PST-E; IDENTIFIER: RN102546397; LOCATION: Conroe, Montgomery 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; PENALTY: \$5,025; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: BIG CHIEF DISTRIBUTING COMPANY; DOCKET NUMBER: 2015-0648-PST-E; IDENTIFIER: RN103894556; LOCATION: Killeen, Bell County; TYPE OF FACILITY: common carrier; RULE VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$1,225; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Brandywine Acquisition Partners LP; DOCKET NUMBER: 2013-1357-MWD-E; IDENTIFIER: RN100815232; LOCATION: Travis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TCEQ Permit Number WQ0014077001 Sludge Provisions and 30 TAC §305.125(1) and (17), by failing to submit the annual sludge report to the TCEQ Austin Regional Office and the Compliance Monitoring Team by September 1st of each year; 30 TAC §305.125(11)(B) and TCEQ Permit Number WQ0014077001 Special Provisions Number 18, by failing to maintain monthly records demonstrating sludge was received by an authorized facility; TCEQ Permit Number WQ0014077001 Effluent Limitations and Monitoring Requirements, 30 TAC §305.125(1) and TWC, §26.121(a)(1), by failing to comply with permitted effluent limits; TCEQ Permit Number WQ0014077001 Monitoring and Reporting Requirements Numbers 7.a. and 7.c. and 30 TAC §305.125(1), by failing to submit noncompliance notifications to the TCEQ Austin Regional Office and the Compliance Monitoring Team within five working days of any effluent violations which deviate from the permitted effluent limitations by more than 40%; TCEQ Permit Number WQ0014077001 Special Provision Number 17.e.5. and 30 TAC §305.125(1), by failing to collect background groundwater samples from outside the influence of the effluent drip irrigation on a quarterly basis; TCEQ Permit Number WQ0014077001 Special Provision 17.e.4(C) and 30 TAC §305.125(1), by failing to install and properly locate three lysimeters as required by the permit in order to demonstrate groundwater protection; and TCEQ Permit Number WQ0014077001 Special Provision Numbers 17.c. through 17.e. and 30 TAC §305.125(1), by failing to submit the Soil Moisture Monitoring Plan, the Irrigation Management Plan, and the Shallow Groundwater Monitoring to the Ground Water Protection team; PENALTY: \$18,150; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: CHRISTUS HEALTH dba Christus Santa Rosa Hospital Medical Center; DOCKET NUMBER: 2015-0309-PST-E; IDENTIFIER: RN101858504; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: medical center with a gasoline powered emergency generator system; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$11,798; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Camp Wood; DOCKET NUMBER: 2015-0681-PWS-E; IDENTIFIER: RN101428381; LOCATION: Camp Wood, Real County; TYPE OF FACILITY: public water

supply; RULES VIOLATED: 30 TAC §290.110(e)(2) and (5), and §290.111(h)(2) and (12), by failing to timely submit a Surface Water Monthly Operating Report to the executive director by the tenth day of the month following the end of the reporting period; PENALTY: \$250; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: City of Hamlin; DOCKET NUMBER: 2015-0695-PWS-E; IDENTIFIER: RN101392504; LOCATION: Hamlin, Jones 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: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Ropesville; DOCKET NUMBER: 2015-0408-PWS-E; IDENTIFIER: RN101175990; LOCATION: Ropesville, Hockley County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the maximum contaminant level (MCL) for total coliform and failed to provide public notification and provide a copy of the notification to the executive director regarding the failure to comply with the MCL for total coliform during the month of December 2014; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for a routine distribution coliform sample collected during the month of December 2014; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and provide a copy of the notification to the executive director regarding the failure to comply with the MCL for fluoride during the second and third quarters of 2014; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and provide a copy of the notification to the executive director regarding the failure to provide a Disinfectant Level Quarterly Operating Report to the executive director for the second quarter of 2014; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91100004 for Fiscal Year 2015; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §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; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to customers of the facility within 24 hours of inadequate chlorine residuals in the distribution system being recorded using the prescribed notification format; PENALTY: \$1,051; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(8) COMPANY: City of Roscoe; DOCKET NUMBER: 2015-0335-MLM-E; IDENTIFIER: RN101917581; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: abandoned wastewater treatment plant; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to cause, suffer, allow, or permit outdoor burning within the state of Texas; and 30 TAC §330.15(a) and (c) and TWC, §26.121, by failing to cause, suffer, allow or permit the unauthorized disposal of municipal solid waste; PENALTY: \$11,812; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Tatum; DOCKET NUMBER: 2015-0519-MWD-E; IDENTIFIER: RN101918407; LOCATION: Tatum, Rusk County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010850001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: \$8,500; Supplemental Environmental Project offset amount of \$6,800; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Combined Consumers Special Utility District; DOCKET NUMBER: 2015-0773-PWS-E; IDENTIFIER: RN101440568; LOCATION: Quinlan, Hunt 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 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: \$690; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: CW-MHP, Limited; DOCKET NUMBER: 2015-0403-MWD-E; IDENTIFIER: RN102077062; LOCATION: Harris 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 WQ0014886001 Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §21.4 and TWC, §5.702, by failing to pay outstanding consolidated water quality assessment and associated late fees for TCEQ Financial Account Number 23006162 for the 2014 fiscal year; PENALTY: \$4,312; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Exflour Research Corporation; DOCKET NUMBER: 2015-0104-AIR-E; IDENTIFIER: RN104386388; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: specialty fluorocarbon production plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(c), THSC, §382.085(b), and New Source Review Permit Number 84719, Special Conditions Number 7, by failing to comply with permit conditions; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(13) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2014-1766-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2000, Special Terms and Conditions Number 18, and Flexible Permit Numbers 49138, PSDTX768M1, PSDTX799, PSDTX802, PSDTX932, and PSDTX992M1, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$19,688; Supplemental Environmental Project offset amount of \$7,875; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: GREENWOOD VENTURES INCORPORATED; DOCKET NUMBER: 2015-0498-PWS-E; IDENTIFIER: RN102689213; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC

§290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failed to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(a)(2) and TCEQ Default Order Docket Number 2013-0281-PWS-E, Ordering Provision Number 3.a.iv, by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the acute maximum contaminant level (MCL) for nitrate; 30 TAC §290.122(b)(2)(A), (3)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for gross alpha particle activity; 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to provide the results of nitrate, arsenic, and selenium sampling and the failure to conduct coliform monitoring; 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to submit the results of fluoride sampling monitoring and the failure to submit the Disinfectant Level Quarterly Operating Reports; 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to submit the results of triennial cyanide sampling, triennial Stage 1 disinfection byproducts sampling, triennial synthetic organic chemical (SOC) contaminants sampling, and the failure to submit the results of six-year SOC contaminants sampling; and 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis; PENALTY: \$1,979; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(15) COMPANY: Jim M. Powell; DOCKET NUMBER: 2015-1006-WOC-E; IDENTIFIER: RN105524144; LOCATION: Teague, Free-stone County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Lake Amistad Rentals, L.L.C.; DOCKET NUMBER: 2015-0326-MLM-E; IDENTIFIER: RN101233294 and RN107937369; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, and/or pressure maintenance capacity; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of Well Numbers 1 and 2; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.43(c)(3), by failing to provide an overflow on the facility's 0.0018 million gallon storage tank designed in strict accordance with American Water Works Association standards that terminates with a gravity-hinged and weighted cover and fits tightly with no gap over 1/16 inch; 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 §290.121(a) and (b)(1), by failing to compile an up-to-date chemical and microbiolog-

ical monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories the facility will use to comply with the monitoring requirements; and TWC, §26.121(a)(1) and 30 TAC §305.42(a), by failing to obtain authorization to discharge wastewater associated with a wastewater treatment facility; PENALTY: \$4,585; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(17) COMPANY: Luna Road Recyclers, LLC; DOCKET NUMBER: 2015-0653-AIR-E; IDENTIFIER: RN108189408; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a rock crusher; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Mansfield Sand & Select, LLC; DOCKET NUMBER: 2015-0340-WQ-E; IDENTIFIER: RN104318316 and RN106612674; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: aggregate production operations; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the aggregate production operation registration annually as regulated activities continued; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Marcelo Vera and Marcelo's, L.P.; DOCKET NUMBER: 2015-0474-MLM-E; IDENTIFIER: RN107904336; LOCATION: Austin, Travis County; TYPE OF FACILITY: composting and mulch facility; RULES VIOLATED: 30 TAC §328.5(b), by failing to submit a Notice of Intent (NOI) prior to the commencement of recycling activities; 30 TAC §328.5(h), by failing to maintain a fire prevention and suppression plan and make it available to the local fire prevention authority; 30 TAC §37.921 and §328.5(d), by failing to maintain financial assurance adequate for closure of a recycling facility; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26, by failing to obtain authorization for storm water discharges under the Texas Pollutant Discharge Elimination System Multi-Sector General Permit associated with an industrial facility; PENALTY: \$21,009; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(20) COMPANY: MD America Energy, LLC; DOCKET NUMBER: 2015-0134-WR-E; IDENTIFIER: RN107892028; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: oil exploration operation; RULES VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$750; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Miguel Alejandro Gonzalez; DOCKET NUMBER: 2015-0400-MLM-E; IDENTIFIER: RN106948136; LOCATION: Del Valle, Travis County; TYPE OF FACILITY: local trucking company and an unauthorized municipal solid waste; 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 industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; and 30 TAC §330.15(c), by failing to cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$2,375; ENFORCEMENT COORDINATOR: Alejandro Laje, (512)

239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(22) COMPANY: Ongley Trucking, Incorporated; DOCKET NUMBER: 2015-0613-PST-E; IDENTIFIER: RN106792468; LOCATION: Fort Worth and Dallas, Tarrant and Dallas Counties; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Padaana LLC dba Get N Go Market and Deli 6; DOCKET NUMBER: 2015-0573-PST-E; IDENTIFIER: RN101845527; LOCATION: Evadale, Jasper County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and (c)(2)(C) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the underground storage tank (UST) system; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; 30 TAC §334.42(i), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser in each pressurized delivery or product line; 30 TAC §334.602(a)(3), by failing to comply with UST operator training requirements; and 30 TAC §334.45(d)(1)(E)(iv), by failing to monitor the interstitial space of the secondarily contained piping system; PENALTY: \$26,462; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Pilot Travel Centers LLC; DOCKET NUMBER: 2015-0402-IWD-E; IDENTIFIER: RN105495063; LOCATION: Caddo Mills, Hunt County; TYPE OF FACILITY: retail fueling station and restaurant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004849000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$8,100; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: R. C. McBryde Oil Company dba Segovia Truck Stop; DOCKET NUMBER: 2015-1030-PST-E; IDENTIFIER: RN101617074; LOCATION: Junction, Kimble County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to maintain Financial Assurance; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(26) COMPANY: Republic Services, Incorporated; DOCKET NUMBER: 2015-0334-IHW-E; IDENTIFIER: RN103765053; LOCATION: Houston, Harris County; TYPE OF FACILITY: industrial solid waste transportation company; RULE VIOLATED: 30 TAC §335.4, by failing to cause, suffer, allow, or permit the disposal of

municipal hazardous waste to an unauthorized facility; PENALTY: \$1,125; Supplemental Environmental Project offset amount of \$450; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2015-0442-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1668, Special Terms and Conditions Number 22, and New Source Review Permit Numbers 3219 and PSDTX974, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$13,126; Supplemental Environmental Project offset amount of \$5,250; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: SKB Enterprises, Incorporated dba Pat Booker Texaco; DOCKET NUMBER: 2015-0688-PST-E; IDENTIFIER: RN102455789; LOCATION: Universal City, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,568; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(29) COMPANY: Targa Downstream LLC; DOCKET NUMBER: 2015-0471-AIR-E; IDENTIFIER: RN100214212; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: petroleum hydrocarbon storage and loading terminal; RULES VIOLATED: 30 TAC §122.121 and §122.217(a)(2) and Texas Health and Safety Code (THSC), §382.054 and §382.085(b), by failing to submit a permit revision application to incorporate an emissions unit into a Federal Operating Permit (FOP) prior to operation; 30 TAC §§115.214(a)(3)(F), 115.354(11), 116.115(c), and 122.143(4), FOP Number O614, Special Terms and Conditions Numbers 1.A. and 10, New Source Review Permit Number 5414, Special Conditions Number 12.E., and THSC, §382.085(b), by failing to conduct initial monitoring of components in volatile organic compound service; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O614, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$25,563; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Trailcrest Office, LLC; DOCKET NUMBER: 2015-0835-EAQ-E; IDENTIFIER: RN102745551; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: commercial property; RULES VIOLATED: 30 TAC §213.4(a)(1) and (j)(3), and Edwards Aquifer Protection Plan Number 13-94092101, Standard Conditions Number 3, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to initiating a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(31) COMPANY: Verdant Industries, LLC; DOCKET NUMBER: 2015-0601-AIR-E; IDENTIFIER: RN100220110; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: paper mill; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O1622, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a

Permit Compliance Certification no later than 30 days after the end of the certification period; PENALTY: \$3,638; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: Western Refining Retail, LLC dba Howdys 6081; DOCKET NUMBER: 2015-0517-PST-E; IDENTIFIER: RN107360125; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(A), by failing to obtain a underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; PENALTY: \$10,225; Supplemental Environmental Project offset amount of \$4,090; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(33) COMPANY: WHITTLESEY LANDSCAPE SUPPLIES AND RECYCLING, INCORPORATED; DOCKET NUMBER: 2015-0175-EAQ-E; IDENTIFIER: RN105209175; LOCATION: Round Rock, Travis County; TYPE OF FACILITY: landscape supply and mulching; RULES VIOLATED: 30 TAC §213.4(a)(1) and §213.5(a)(4), by failing to obtain approval of an above ground storage tank facility plan prior to initiating regulated activities over the Edwards Aquifer Transition Zone; PENALTY: \$7,313; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201502719

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 21, 2015



## Enforcement Orders

An agreed order was entered regarding City of Wolfe City, Docket No. 2012-0044-MWD-E on July 10, 2015, assessing \$29,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Cecil Ford, and Cecil Ford as Trustee of the Ford Family Trust, dba Alta Vista Mobile Home Park, Docket No. 2013-0815-MLM-E on July 10, 2015, assessing \$9,711 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.

A default order was entered regarding Ted Booher and Rapid Marine Fuels, LLC dba Rapid Environmental Services, Docket No. 2013-

1309-MLM-E on July 10, 2015, assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald Mayo, Sr. dba Donald Mayo Texaco, Docket No. 2013-1629-PST-E on July 10, 2015, assessing \$33,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pearland, Docket No. 2013-1816-MWD-E on July 10, 2015, assessing \$22,500 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 Hidalgo, Docket No. 2013-1891-MWD-E on July 10, 2015, assessing \$73,025 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHERN MANUFACTURING CO., L.L.C., Docket No. 2013-2026-AIR-E on July 10, 2015, assessing \$12,000 in administrative penalties with \$10,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United States Department of the Air Force, Docket No. 2013-2072-WQ-E on July 10, 2015, assessing \$4,583.75 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 Forged Products, Inc., Docket No. 2013-2198-AIR-E on July 10, 2015, assessing \$12,964 in administrative penalties with \$2,592 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.

A default order was entered regarding Lecure Donald dba A-Original Tire Man, Docket No. 2014-0503-MSW-E on July 10, 2015, assessing \$11,812 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 Kyle Freeman, Docket No. 2014-0520-MLM-E on July 10, 2015, assessing \$6,046 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 Lewis Petro Properties, Inc., Docket No. 2014-0817-AIR-E on July 10, 2015, assessing \$36,628 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2014-0868-AIR-E on July 10, 2015, assessing \$87,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell County Water Control & Improvement District No. 2, Docket No. 2014-0936-MWD-E on July 10, 2015, assessing \$29,250 in administrative penalties with \$5,850 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 The Lubrizol Corporation, Docket No. 2014-0971-AIR-E on July 10, 2015, assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Refining Southwest, Inc. dba C & R Howdy's 28 and dba C & R 3, Docket No. 2014-1051-PST-E on July 10, 2015, assessing \$87,785 in administrative penalties with \$17,557 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Wayne H. Lanier, Jr. dba Wayne Lanier Rental Lures Icehouse, Docket No. 2014-1055-PWS-E on July 10, 2015, assessing \$2,286 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colleen Lenahan, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JORGE & FLOR TRUCKING LLC, Docket No. 2014-1061-PWS-E on July 10, 2015, assessing \$726 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512)

239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EnAqua Solutions, LLC, Docket No. 2014-1070-AIR-E on July 10, 2015, assessing \$18,375 in administrative penalties with \$3,675 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 Shell Chemical LP, Docket No. 2014-1110-AIR-E on July 10, 2015, assessing \$19,688 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 ConocoPhillips Company, Docket No. 2014-1119-AIR-E on July 10, 2015, assessing \$13,600 in administrative penalties with \$2,720 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 Liberty Utilities (Woodmark Sewer) Corp. dba Woodmark Utilities, Inc., Docket No. 2014-1127-MWD-E on July 10, 2015, assessing \$31,687 in administrative penalties.

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 Stone Oak Hidden Canyon, L.L.C., Docket No. 2014-1128-EAQ-E on July 10, 2015, assessing \$15,750 in administrative penalties with \$3,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding E & A MATERIALS, INC., Docket No. 2014-1137-MLM-E on July 10, 2015, assessing \$2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAHAD INVESTMENTS, INC. dba Riverside Market, Docket No. 2014-1169-PST-E on July 10, 2015, assessing \$12,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Albemarle Corporation, Docket No. 2014-1216-AIR-E on July 10, 2015, assessing \$13,575 in administrative penalties with \$2,715 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Indus Interest, LLC dba Big Bens, Docket No. 2014-1240-PST-E on July 10, 2015, assessing \$26,094 in administrative penalties with \$5,218 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 City of Hewitt, Docket No. 2014-1243-WQ-E on July 10, 2015, assessing \$5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST PARK BUSINESS INC dba Gator Stop 4, Docket No. 2014-1346-PST-E on July 10, 2015, assessing \$13,890 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 Lindig Construction and Trucking, Inc., Docket No. 2014-1387-WQ-E on July 10, 2015, assessing \$48,250 in administrative penalties with \$9,650 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.

A default order was entered regarding AmAu Incorporated dba Westside Grocery, Docket No. 2014-1398-PST-E on July 10, 2015, assessing \$6,496 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 Marin Gonzalez dba Lazy Palms Ranch, Docket No. 2014-1422-PWS-E on July 10, 2015, assessing \$756 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atco-Valley Plaza, LLC, Docket No. 2014-1423-IWD-E on July 10, 2015, assessing \$7,875 in administrative penalties with \$1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Carbide Corporation, Docket No. 2014-1455-AIR-E on July 10, 2015, assessing \$67,600 in administrative penalties with \$13,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zapata County, Docket No. 2014-1461-MWD-E on July 10, 2015, assessing \$9,500 in administrative penalties with \$1,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sabinal, Docket No. 2014-1545-MLM-E on July 10, 2015, assessing \$9,750 in administrative penalties with \$1,950 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vakratunda Enterprises LLC dba Aldine Express, Docket No. 2014-1575-PST-E on July 10, 2015, assessing \$9,000 in administrative penalties with \$1,800 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 City of Santa Rosa, Docket No. 2014-1593-PWS-E on July 10, 2015, assessing \$1,662 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eastman Chemical Company, Docket No. 2014-1613-AIR-E on July 10, 2015, assessing \$8,325 in administrative penalties with \$1,665 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Huxley, Docket No. 2014-1646-PWS-E on July 10, 2015, assessing \$507 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James 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 Printpack, Inc., Docket No. 2014-1758-AIR-E on July 10, 2015, assessing \$9,375 in administrative penalties with \$1,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kilgore, Docket No. 2014-1777-MWD-E on July 10, 2015, assessing \$21,300 in administrative penalties.



Information concerning any aspect of this order may be obtained by contacting Chris Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Burnet, Docket No. 2014-1870-PWS-E on July 10, 2015, assessing \$690 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 TRANSPORT CORPORATION OF AMERICA, INC. dba Transport America, Docket No. 2015-0045-PST-E on July 10, 2015, assessing \$21,484 in administrative penalties with \$4,296 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.

TRD-201502740

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2015



#### 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 31, 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 31, 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: ALAMO RECYCLE CENTERS LLC; DOCKET NUMBER: 2012-2270-MSW-E; TCEQ ID NUMBER: RN106360142; LOCATION: 5661 Agnes Street, Corpus Christi, Nueces County; TYPE OF FACILITY: shingle collection center; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$3,562; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: JAN ENTERPRISES INC. dba Nikus Lucky Lady; DOCKET NUMBER: 2014-0481-PST-E; TCEQ ID NUMBER: RN100539717; LOCATION: 6728 Davis Boulevard, North Richland Hills, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail gasoline sales; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.72, by failing to report a suspected release from a UST system within 24 hours of the discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$6,699; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Roger Guajardo dba Roger's Tire and Supply; DOCKET NUMBER: 2015-0054-MSW-E; TCEQ ID NUMBER: RN106638117; LOCATION: 601 North Main Street, Morton, Cochran County; TYPE OF FACILITY: tire repair shop; RULES VIOLATED: 30 TAC §328.56(d)(2) and §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground or 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in trailers or enclosed and lockable containers; PENALTY: \$7,650; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(4) COMPANY: SAL Construction Management, LLC; DOCKET NUMBER: 2014-1382-WQ-E; TCEQ ID NUMBER: RN107204943; LOCATION: intersection of Farm-to-Market Road 72 and County Road 1145, Kenedy, Karnes County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent the discharge of sediment into or adjacent to water in the state; PENALTY: \$1,938; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Trident Environmental Resource Consulting, LLC; DOCKET NUMBER: 2013-0871-MSW-E; TCEQ ID NUMBER: RN102478450; LOCATION: 3205 Button Bush, Keller, Tarrant County; TYPE OF FACILITY: scrap tire transporter with a business office; RULES VIOLATED: Texas Health and Safety Code, §361.112(g), and 30 TAC §328.57(c)(2) and §328.58, by failing to maintain records using an appropriate manifest system; PENALTY: \$725; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

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Notice of Opportunity to Comment on Default Orders of  
Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 31, 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 31, 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 DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Conrad D. Liles; DOCKET NUMBER: 2014-1773-LII-E; TCEQ ID NUMBER: RN105177836; LOCATION: 1843 State Highway 75 North, Huntsville, Walker County; TYPE OF FACILITY: irrigation business; RULE VIOLATED: 30 TAC §344.63(4), by failing to provide a homeowner with an irrigation system plan indicating the actual installation of the irrigation system that was installed; PENALTY: \$578; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: John Alihemati dba Station 66; DOCKET NUMBER: 2014-1312-PST-E; TCEQ ID NUMBER: RN103937389; LOCATION: 7500 Gateway Boulevard North, El Paso, El Paso County; TYPE OF FACILITY: underground storage tank (UST) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously

issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to the common carrier a valid, current TCEQ delivery certificate before accepting deliveries of a regulated substance into the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 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 which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(iii)(I), by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.50(d)(1)(B)(iii)(III), by failing to ensure that the dispensers were calibrated within an accuracy of six or less cubic inches for every five gallons of product withdrawn; 30 TAC §334.51(c), by failing to maintain spill and overflow prevention control records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.42(i), by failing to inspect all sumps including dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §334.45(c)(3)(A), by failing to ensure that a fusible link is included on the shutoff valve designed to provide a positive shut-off of product flow in the event that a fire, collision, or other emergency occurs at the dispenser end of the pressurized line; 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 for the facility; PENALTY: \$23,417; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Odell Anderson dba AAA Anderson; DOCKET NUMBER: 2014-1791-MSW-E; TCEQ ID NUMBER: RN106339286; LOCATION: 5126 Farm-to-Market Road 482, New Braunfels, Comal County; TYPE OF FACILITY: truck repair shop and utility and commercial storage facility; RULES VIOLATED: 30 TAC §328.59(b)(1) and §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground and/or more than 2,000 used or scrap tires (or weight equivalent tire pieces or any combination thereof) in enclosed and lockable containers; PENALTY: \$11,250; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201502721  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: July 21, 2015

◆ ◆ ◆  
Notice of Receipt of Application and Intent to Obtain  
Municipal Solid Waste Permit Major Amendment

PROPOSED PERMIT NO. 1565B

SOAH Docket No. 582-15-2221 TCEQ Docket No. 2015-0119-MSW

APPLICATION. USA Waste of Texas Landfills Inc., Fairbanks Landfill, 800 Gessner Road, Suite 1100, Houston, Harris County, Texas 77024, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type IV Municipal Solid Waste permit to authorize a lateral and vertical expansion of the Fairbanks Landfill. The permit major amendment application requests to increase the size and waste disposal volume of the facility. The facility is located at 8205 Fairbanks North Houston Road, Houston, Harris County, Texas 77064. The TCEQ received the application on August 30, 2013. The permit application is available for viewing and copying at the Fairbanks Branch Library, 7122 North Gessner Road, Houston, Harris County, Texas 77040, and may be viewed online at <http://www.wm.com/wm/texas/permits.asp>. The following website provides an electronic map of the site or facility's general location and is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.9&lng=-95.5278&zoom=13&type=r>. For exact location, refer to application.

APPLICATION STATUS. TCEQ's Executive Director determined the application is administratively complete, conducted a technical review of the application, prepared a draft permit, and issued a preliminary decision on the application. TCEQ held a public meeting on the Application on October 23, 2014. The Public Comment Period closed on October 23, 2014. The application was directly referred by the applicant to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The Administrative Law Judge has designated parties and issued a procedural schedule.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A person who may be affected by the facility may request to intervene as a party to the contested case hearing by filing such request with SOAH and with the TCEQ Office of the Chief Clerk. A contested case hearing is a legal proceeding similar to a civil trial in state district court. TO REQUEST TO INTERVENE AND BE ADMITTED AS A PARTY TO THE CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; SOAH Docket No.; TCEQ Docket No.; the location and distance of your property/activities relative to the facility; and a specific description of how you would be adversely affected by the facility in a way not common to the general public. If the request to intervene as a party to in the 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. The contested case hearing is on disputed issues of fact that are relevant and material to the Commission's decision on the application.

MAILING LIST. If you submit a request to intervene as a party to the contested case hearing, public comments, 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.

SOAH CONTACTS AND INFORMATION All requests must be submitted either electronically at <https://cis.soah.state.tx.us/soahupload/Login.aspx?ReturnUrl=%2fsoahupload%2> or in writing to the State Office of Administrative Hearings, 300 West 15th Street, Suite

502 Austin, Texas 78701 or to fax number (512) 322-2061. More information about the contested case hearing process is available online at <http://www.soah.state.tx.us/about-us/index.asp> or you may call SOAH at (512) 475-4993.

AGENCY CONTACTS AND INFORMATION. All requests must also be submitted either electronically at [www.tceq.texas.gov/about/communications.html](http://www.tceq.texas.gov/about/communications.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 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from USA Waste of Texas Landfills, Inc. at the address stated above or by calling Mr. Chuck Rivette, P.E., Director of Planning and Project Development at (713) 647-5542.

Issuance Date: September 20, 2013

TRD-201502739

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2015

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**Notice of Water Quality Application**

The following notice was issued on July 16, 2015.

**INFORMATION SECTION**

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

City of Eustace has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0014789001 to authorize replacement of the existing stabilization ponds, construction of a secondary clarifier, and change in method of disinfection from Natural system to chlorination. The facility is located at 113 Davis Street, approximately 800 feet east of the intersection of Cornelius Lane and Smith Street, southeast of midtown Eustace, in Henderson County, Texas 75124.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al 800-687-4040.

TRD-201502737

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 22, 2015

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**Texas Facilities Commission**

Request for Proposals #303-6-20499-A

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request

for Proposals (RFP) #303-6-20499-A. TFC seeks a five (5) or ten (10) year lease of approximately 5,171 square feet of office space in San Angelo, Tom Green County, Texas.

The deadline for questions is August 11, 2015, and the deadline for proposals is August 19, 2015, at 3:00 p.m. The award date is September 16, 2015. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=118983](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=118983).

TRD-201502723

Kay Molina

General Counsel

Texas Facilities Commission

Filed: July 21, 2015

## Department of Family and Protective Services

### Notice of Consultant Contract Amendment

In accordance with Texas Government Code, Chapter 2254, the Health and Human Services Commission (HHSC), on behalf of the Department of Family and Protective Services (DFPS), announces this notice of intent to amend a consultant contract to help continue implementation of activities related to the Child Protective Services (CPS) important transformation initiative, including project management, continuous quality improvement, regional support and monitoring work to verify the schedule is met and the benefits are achieved for its CPS Division.

The notice of request for proposals (DFPS RFP No. 530-14-84910) was published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 6059), which provided that DFPS could exercise an option for the awarded consultant to assist the agency with implementing approved recommendations. The notice of award was published in the March 7, 2014, issue of the *Texas Register* (39 TexReg 1761). Unless a better offer for the provision of the consulting services is received not later than thirty (30) days from the date of this publication, DFPS will execute the following amendment:

#### *CPS Operational Review Consultant Contract Amendment*

*Contract #:* 530-14-7777-00085

*Contractor Name:* The Stephen Group, LLC; 814 Elm Street, Suite 309; Manchester, NH 03102

In accordance with Texas Government Code 2254.031 and .030, DFPS will post a notice to the *Texas Register* no later than 20 days after amending the above referenced contract with the following information:

*Amendment #:* 3

*Amendment Effective Date:* To be determined.

*Contract End Date:* To be determined.

*Deliverables Due:* To be determined.

*Total Contract Value:* To be determined.

For the submission of offers or information concerning this proposed amendment, please contact: Claire Hall, Project Manager at (512) 438-5257 or email [Claire.Hall@dfps.state.tx.us](mailto:Claire.Hall@dfps.state.tx.us).

TRD-201502705

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Filed: July 20, 2015

## Texas Department of Housing and Community Affairs

### Notice of Public Hearing and Public Comment Period on the Draft 2016 Regional Allocation Formula Methodology

The Texas Department of Housing and Community Affairs ("the Department") will hold a public hearing to accept public comment on the Draft 2016 Regional Allocation Formula ("RAF") Methodology.

The public hearing will take place as follows:

Monday, August 3, 2015

2:00 p.m.

Stephen F. Austin Building

1700 North Congress Avenue, Room 170

Austin, TX 78701

The RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. The RAF also allocates funding to rural and urban areas within each region. The Department has flexibility in determining variables to be used in the RAF, per §2306.1115(a)(3) of the Texas Governing Code, "the department shall develop a formula that...includes other factors determined by the department to be relevant to the equitable distribution of housing funds." The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

For the 2016 Draft RAF, the Department is releasing two Methodology documents for public comment; one for the Multifamily Activities and one for the Single Family Activities. Based on public comment received in the 2015 RAF cycle and on a staff draft of the 2016 Single Family RAF, a new factor has been added to the 2016 Draft Single Family RAF Methodology. This new factor is called the Regional Coverage Factor.

The Single Family HOME, Multifamily HOME, Housing Tax Credit (HTC) and Housing Trust Fund (HTF) program RAFs each use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. For example, §2306.111(c) of the Texas Government Code requires that 95% of HOME funding be set aside for non-participating jurisdictions (non-PJs). Therefore, the Single Family and Multifamily HOME RAFs only use need and available resource data for non-PJs.

Both the Multifamily and Single Family RAF methodologies explain the use of factors, in keeping with the statutory requirements, which include the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state.

The public comment period for the Draft 2016 RAF methodology will be open from Friday, July 17, 2015, through Thursday, August 6, 2015. Anyone may submit comments on the Draft 2016 RAF Methodology in written form or oral testimony at the August 3, 2015, public hearing.

Written comments concerning the Draft 2016 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, TX 78711-3941, by email to [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us), or by fax to (512) 475-0070. Comments must be received no later than Thursday, August 6, 2015, at 6:00 p.m. Central Time.

Individuals who require auxiliary aids or services at the public hearing should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at [elana.peinado@tdhca.state.tx.us](mailto:elana.peinado@tdhca.state.tx.us) 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 o enviarle un correo electrónico a [elana.peinado@tdhca.state.tx.us](mailto:elana.peinado@tdhca.state.tx.us) por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201502716  
Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: July 21, 2015

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**Texas Department of Insurance**

**Company Licensing**

Application to change the name of MAJESTIC INSURANCE COMPANY to GREENPATH INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in San Francisco, California.

Application to change the name of TEXAS GENERAL INDEMNITY COMPANY to UFG SPECIALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Westminster, Colorado.

Application for a certificate of authority by LONESTAR ENERGY EMPLOYEE BENEFIT TRUST, a domestic multiple employee welfare arrangement. The home office in Wichita Falls, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of publication in the *Texas Register*, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201502738  
Sara Waitt  
General Counsel  
Texas Department of Insurance  
Filed: July 22, 2015

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**Notice of Application to Increase Texas Stamping Office Fee**

The directors of the Surplus Lines Stamping Office of Texas have approved a resolution requesting that the commissioner of insurance authorize increasing the stamping fee rate to 0.15% (0.0015) from its current rate of 0.06% (0.0006) under the Plan of Operation for the Surplus Lines Stamping Office of Texas. The Plan of Operation is in 28 TAC §15.101. The proposed effective date for the increase is January 1, 2016. This request is now before the commissioner and is under consideration.

The Surplus Lines Stamping Office of Texas was created in 1987 and is a nonprofit corporation subject to the supervision of the commissioner. The Stamping Office monitors the sale of surplus lines insurance policies and evaluates the eligibility of surplus lines insurers that write surplus lines insurance in Texas.

Any comments on this stamping fee rate increase request must be filed with the Texas Department of Insurance by August 20, 2015, and addressed to the attention of Danny Saenz, Deputy Commissioner, Financial Regulation Division, 333 Guadalupe Street, M/C 305-2A, Austin, Texas 78701.

TRD-201502718  
Norma Garcia  
Chief Clerk  
Texas Department of Insurance  
Filed: July 21, 2015

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**Texas Department of Licensing and Regulation**

**Notice of Vacancies on Athletic Trainers Advisory Board**

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Athletic Trainers Advisory Board (Board), established by Texas Occupations Code, Chapter 451. The purpose of the Athletic Trainers Advisory Board is to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter. The department shall appoint an advisory board to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

The Board consists of five members appointed by the presiding officer of the commission, with the approval of the commission. The advisory board consists of the following members:

- three members who are athletic trainers; and
- two members who represent the public.

Board members serve staggered six-year terms with the terms of one or two members expiring on January 31 of each odd-numbered year. This announcement is for the five positions listed above.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201502730  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: July 21, 2015

◆ ◆ ◆  
**Notice of Vacancies on Dietitians Advisory Board**

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Dietitians Advisory Board (Board) established by Texas Occupations Code, Chapter 701. The purpose of the Dietitians Advisory Board is to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

The Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission. The advisory board consists of the following members:

Six licensed dietitians, each of whom has been licensed under Chapter 701 for not less than three years before the member's date of appointment; and

Three members who represent the public.

In appointing dietitian members to the advisory board, the presiding officer of the commission shall attempt to maintain balanced representation among the following primary areas of expertise included in the professional discipline of dietetics:

- (a) clinical;
- (b) educational;
- (c) management;
- (d) consultation; and
- (e) community.

Members serve staggered six-year terms. The terms of three members begin on September 1 of each odd-numbered year. This announcement is for the nine positions listed above.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail at [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201502728

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 21, 2015



#### Notice of Vacancies on Driver Training and Traffic Safety Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Driver Training and Traffic Safety Advisory Committee (Committee) established by Texas Education Code, Chapter 29. The purpose of the Driver Training and Traffic Safety Advisory Committee is to advise the Texas Commission on Licensing and Regulation and the Department on rules and educational and technical matters relevant to the administration of this chapter.

The Committee consists of eleven members appointed by the presiding officer of the commission, with the approval of the commission. The advisory board consists of the following members:

- (1) one member representing a driver education school that offers a traditional classroom course and in-car training;
- (2) one member representing a driver education school that offers a traditional classroom course, alternative methods of instruction, or in-car training;
- (3) one member representing a driving safety school offering a traditional classroom course or providing an alternative method of instruction;
- (4) one member representing a driving safety course provider approved for a traditional classroom course and for an alternative method of instruction;
- (5) one member representing a driving safety course provider approved for a traditional classroom course or for an alternative method of instruction;

(6) one licensed instructor;

(7) one representative of the Department of Public Safety;

(8) one member representing a drug and alcohol driving awareness program course provider;

(9) one member representing a parent-taught course provider; and

(10) two members representing the public.

Members serve staggered six-year terms. This announcement is for the ten positions listed above with the exception of the Department of Public Safety representative.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201502746

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 22, 2015



#### Notice of Vacancies on Hearing Instrument Fitters and Dispensers Advisory Board

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Hearing Instrument Fitters and Dispensers Advisory Board (Board) established by Texas Occupations Code, Chapter 402. The purpose of the Hearing Instrument Fitters and Dispensers Advisory Board is to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

The Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission. The advisory board consists of the following members:

- (1) six members licensed under this chapter who have been residents of this state actually engaged in fitting and dispensing hearing instruments for at least five years preceding appointment, not more than one of whom may be licensed under Chapter 401;
- (2) one member who is actively practicing as a physician licensed by the Texas Medical Board and who:
  - (A) has been a resident of this state for at least two years preceding appointment;
  - (B) is a citizen of the United States; and
  - (C) specializes in the practice of otolaryngology; and
- (3) two members of the public.

Members serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year. This announcement is for the nine positions listed above.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201502734

William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: July 21, 2015



#### Notice of Vacancies on Midwives Advisory Board

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Midwives Advisory Board (Board) established by Texas Occupations Code, Chapter 203. The purpose of the Midwives Advisory Board is to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

The Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission. The advisory board consists of the following members:

- (1) five licensed midwives each of whom has at least three years' experience in the practice of midwifery;
- (2) one physician who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists;
- (3) one physician who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians; and
- (4) two members who represent the public and who are not practicing or trained in a health care profession, one of whom is a parent with at least one child born with the assistance of a midwife.

Members serve staggered terms of six years. The terms of three members expire on January 31 of each odd-numbered year. This announcement is for the nine positions listed above.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201502736  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: July 21, 2015



#### Notice of Vacancies on Orthotists and Prosthetists Advisory Board

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Orthotists and Prosthetists Advisory Board (Board) established by Texas Occupations Code, Chapter 605. The purpose of the Orthotists and Prosthetists Advisory Board is to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

The Board consists of seven members appointed by the presiding officer of the commission, with the approval of the commission. The advisory board consists of the following members:

- (1) two licensed orthotists who each have practiced orthotics for the five years preceding the date of appointment;
- (2) two licensed prosthetists who each have practiced prosthetics for the five years preceding the date of appointment;

(3) one licensed prosthetist orthotist who has practiced orthotics and prosthetics for the five years preceding the date of appointment;

(4) one member who is a representative of the public who uses an orthosis; and

(5) one member who is a representative of the public who uses a prosthesis.

Members serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year. This announcement is for the seven positions listed above.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874, or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201502729  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: July 21, 2015



#### Notice of Vacancies on Speech-Language Pathologists and Audiologists Advisory Board

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Speech-Language Pathologists and Audiologists Advisory Board (Board) established by Texas Occupations Code, Chapter 401. The purpose of the Speech-Language Pathologists and Audiologists Advisory Board is to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

The Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission. The advisory board consists of the following members:

- (1) three audiologists;
- (2) three speech-language pathologists; and
- (3) three members who represent the public.

Advisory board members must:

- (1) have been a resident of this state for the two years preceding the date of appointment;
- (2) be from the various geographic regions of the state; and
- (3) be from varying employment settings.

The advisory board members appointed under sections (1) and (2) must:

- (a) have been engaged in teaching, research, or providing services in speech-language pathology or audiology for at least five years; and
- (b) be licensed under this chapter.

One of the public members must be a physician licensed in this state and certified in otolaryngology or pediatrics.

Members are appointed for staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year. This announcement is for the nine positions listed above.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department

by telephone (800) 803-9202, fax (512) 475-2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201502735

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 21, 2015



### Notice of Vacancy on Electrical Safety and Licensing Advisory Board

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Electrical Safety and Licensing Advisory Board (Board) established by Texas Occupations Code, Chapter 1305. The purpose of the Electrical Safety and Licensing Advisory Board is to provide advice and recommendations to the Texas Commission of Licensing and Regulation (Commission) on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, electrical code requirements, and continuing education requirements.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of three master electricians, three journeyman electricians, one master sign electrician, and two public members. The advisory board members must include:

- (1) two members who are affiliated with a statewide association of electrical contractors not affiliated with a labor organization;
- (2) three members who are affiliated with a labor organization;
- (3) one member who is not affiliated with a statewide association of electrical contractors or with a labor organization;
- (4) one member who is affiliated with a historically underutilized business, as that term is defined by Section 2161.001, Government Code; and
- (5) one public member who is a building contractor principally engaged in home construction and is a member of a statewide building trade association.

A licensed electrical engineer or an electrical inspector may be appointed as a public member of the advisory board.

Members serve staggered six-year terms. This announcement is for a master sign electrician.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail [advisory.boards@tdlr.texas.gov](mailto:advisory.boards@tdlr.texas.gov).

TRD-201502745

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: July 22, 2015



### Texas Lottery Commission

#### Correction of Error

The Texas Lottery Commission published notice of Instant Game Number 1714 "Bonus Cashword" in the July 17, 2015, issue of the *Texas*

*Register* (40 TexReg 4739). On page 4740, second column, third line, the correct description of the symbol was replaced with a "?". The corrected paragraph reads as follows:

"C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the Ticket. Each Play Symbol is printed in symbol font in black ink in positive except for dual-imaged games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z and the BLACKENED SQUARE SYMBOL."

TRD-201502709



### State Preservation Board

#### Correction of Error

The State Preservation Board (board) proposed amendments to 13 TAC §111.25 and §111.27 and new §§111.34 - 111.47, concerning rules and regulations of the board, in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4501). Two errors appeared in the last paragraph on page 4501, first column, continuing on the second column. The email address and fax number are incorrect. The corrected paragraph reads as follows:

"Comments on the proposed amendments may be submitted in writing to Chris Currens, Director of Special Projects, P.O. Box 13286, Austin, Texas 78711. Comments may also be submitted electronically to [Christopher.Currens@tspb.state.tx.us](mailto:Christopher.Currens@tspb.state.tx.us) or faxed to (512) 463-3372...."

TRD-201502698



### Public Utility Commission of Texas

#### Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on July 20, 2015, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 44959.

The requested amendment is to expand the service area footprint to include all unincorporated areas of Waller County, excluding federal properties.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 44959.

TRD-201502722

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 21, 2015



#### Notice of Application for Purchase and Acquisition



Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 10, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Application of Bland Lake Rural Water Supply Corporation and San Augustine Rural Water Supply Corporation For Sale, Transfer, and Merger of Facilities and Certificate Rights in San Augustine County, Docket Number 44919.

The Application: Bland Lake Rural Water Supply Corporation (Bland Lake) and San Augustine Rural Water Supply Corporation (San Augustine) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in San Augustine County, Texas pursuant to Tex. Water Code Ann. §13.302 (West 2008 & Supp. 2014) and 16 Tex. Admin. Code §24.111. Bland Lake currently possesses retail water Certificate of Convenience and Necessity (CCN) No. 10392. San Augustine seeks to acquire all assets, holdings and properties of Bland Lake.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, 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 44919.

TRD-201502743  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 22, 2015



#### Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 14, 2015, to amend a certificated service area for a service area exception within Matagorda County, Texas.

Docket Style and Number: Application of AEP Texas Central Company for a Certificate of Convenience and Necessity for an Electric Service Area Exception in Matagorda County. Docket Number 44942.

The Application: AEP Texas Central Company (AEP TCC) filed an application for a service area exception to allow AEP TCC to provide service to a specific customer located within the certificated service area of Jackson Electric Cooperative, Inc. (JEC). JEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 7, 2015, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44942.

TRD-201502704  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 2015



#### Notice of Application for Waiver from Requirements

Notice is given to the public of an application filed on July 16, 2015, with the Public Utility Commission of Texas (commission) for waiver from the requirements in 16 TAC §26.420(f)(3)(B).

Docket Style and Number: Application of Big Bend Telecom, Ltd. for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to 16 TAC §26.420(f)(3)(B), Docket Number 44952.

The Application: Big Bend Telecom, Ltd. (Big Bend or applicant) stated it is a "Hybrid Carrier" as it provides both local and interexchange long distance telephone service in Texas under the same certificate. Big Bend holds service provider certificate of operating authority (SPCOA) No. 60922. Applicant is also a telecommunications provider as defined in Public Utility Regulatory Act §51.002. Applicant has elected to use the safe-harbor percentage approved by the commission for its classification of telecommunications service provided. Applicant requests that the commission grant it a permanent waiver under the 16 TAC §26.420(f)(3)(B)(ii) from the requirements contained in 16 TAC §26.420(f)(3)(B) to allow applicant to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. An intervention deadline 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 44952.

TRD-201502712  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 2015



#### Notice of Petition for Amendment to Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on July 14, 2015, of a petition to amend a certificate of convenience and necessity by expedited release in Travis County.

Docket Style and Number: Petition of Ivy Berdoll and Ivy Berdoll Family Farms, Inc. to Amend Garfield Water Supply Corporation's Certificate of Convenience and Necessity by Expedited Release in Travis County, Docket No. 44943.

The Application: Ivy Berdoll and Ivy Berdoll Family Farms, Inc. filed a petition for expedited release of approximately 54 acres in Travis County from the Garfield Water Supply Corporation's water certificate of convenience and necessity No. 11244 pursuant to Texas Water Code §13.254(a-5) and 16 TAC §24.113(r).

Persons wishing to intervene or comment on the action sought should contact the commission no later than August 10, 2015, by mail at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline to intervene in this proceeding is August 10, 2015. Hearing and speech impaired individuals with text telephones (TTY) may con-

tact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44943.

TRD-201502714  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 20, 2015



### Public Notice of Public Hearing on Proposed 2016/2017 ERCOT Budget and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will hold a public hearing regarding the proposed budget and change in the System Administration Fee for 2016/2017 for the Electric Reliability Council of Texas (ERCOT) on Wednesday, August 19, 2015, at 10:00 a.m. in the commissioners' hearing room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 38533, *PUC Review of ERCOT Budget*, has been established for this proceeding. Pursuant to P.U.C. Substantive Rule §25.363(d) (relating to ERCOT Budget and Fees), ERCOT is required to submit for commission review its board-approved budget, budget strategies and staffing needs, with a justification for all expenses, capital outlays, additional debt, and staffing requirements. The commission may approve, modify or reject ERCOT's proposed budget and budget strategies. Under §39.151 of the Public Utility Regulatory Act (PURA), the proceeding to consider changes to ERCOT's proposed budget or to authorize or set the range for the System Administration Fee is not a contested case. Additionally, under §39.151, the commission can require ERCOT to prepare an annual or a biennial budget. When the commission approved ERCOT's 2014/2015, biennial budget and System Administration Fee (Fee), it instructed ERCOT to file its proposed 2016/2017 biennial budget and Fee request no later than July 1, 2015, and to provide specific information to facilitate the Commission's consideration of the 2016/2017 request. On July 1, 2015, ERCOT filed in Project No. 38533 its proposed budget for 2016/2017. As part of its 2016/2017 budget, ERCOT proposes to change the Fee, which is currently set at \$0.465 per Megawatt hour (MWh), to \$0.555 per MWh.

Questions concerning the public hearing or this notice should be referred to Thomas S. Hunter, Agency Counsel, (512) 936-7280. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201502683  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 15, 2015



### South East Texas Regional Planning Commission

#### Notice of Request for Proposals

The Transportation and Environmental Resources Division of the South East Texas Regional Planning Commission (SETRPC) of Jefferson, Hardin and Orange Counties, Texas is requesting proposals for demographic and model input data development for an update of the 2014 Jefferson, Orange, Hardin Regional Transportation Study (JOHRTS) Metropolitan Transportation Plan 2040, to the 2019 JOHRTS Metropolitan Transportation Plan 2045 and on-call transportation planning assistance.

The Request for Proposals (RFP) can be downloaded from the SETRPC website at [www.setrpc.org](http://www.setrpc.org). Interested firms may also contact Bob Dickinson, Director of the Transportation and Environmental Resources Division, via fax at (409) 729-6511 to obtain an RFP package.

Proposals must be properly sealed, marked and received no later than 2:00 p.m. Central Time on September 11, 2015. Proposals received after this time will not be considered but will be maintained in the bid file and shall not be considered for this offering. All other proposals will be publicly opened and announced at 2:30 p.m. Central Time on September 11, 2015, in the SETRPC-Transportation Conference Room at 2210 Eastex Freeway, Beaumont, Texas 77703.

TRD-201502682  
Bob Dickinson  
Director  
South East Texas Regional Planning Commission  
Filed: July 15, 2015



#### Request for Proposals: Mitigation Action Plan Update

The South East Texas Regional Planning Commission (SETRPC) is facilitating the solicitation of a consultant to update the Hardin County, Jefferson County, Orange County and SETRPC Mitigation Action Plans to current Federal Emergency Management Agency (FEMA) and Texas Division of Emergency Management (TDEM) approved standards.

The following qualifications are deemed most critical to the success of the update of the plans:

Flooding/disaster/emergency management specialization research skills;

Experience with prior Mitigation Action Plan creating/writing/updating;

Technical writing ability with emphasis on formatting specialized tables, maps, graphics and other special skills that represent data in a professional, comprehensive and accurate manner;

Experience with county and/or city planning, preferably;

Ability to produce editable, updated Mitigation Action Plans for three (3) counties and one (1) region that meet FEMA and State standards for approval.

For a complete Request for Proposals package, please contact Sue Landry via mail or e-mail, addressed to: Sue Landry, SETRPC, 2210 Eastex Freeway, Beaumont, Texas 77703 or [slandry@setrpc.org](mailto:slandry@setrpc.org). Final proposals will be due by Friday, September 18, 2015.

Proposals will be reviewed by a technical sub-committee with selection based on Consultant Selection Criteria included in the Request for Proposals package.

This RFP is released in anticipation of Pre Disaster (PDM) or Hazard Mitigation Grant Program (HMGP) funding. A contract award will only be made in the event that the PDM or HMGP funding is received.

TRD-201502686  
Sue Landry  
Director, HSEMPD  
South East Texas Regional Planning Commission  
Filed: July 16, 2015



### Texas Department of Transportation

## Aviation Division - Request for Qualifications for Aviation Engineering Services

The Texas Department of Transportation, Aviation Division (TxDOT), intends to engage Professional Engineering Firms for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT will solicit and receive qualifications for professional services as described below:

TxDOT CSJ No. 15AVNFUEL

### Project Description and Work to be Performed:

TxDOT intends to select two prime providers for engineering/design services of Avgas and/or Jet A fueling systems, including modifications or enhancements of existing fuel systems, at various general aviation airports across the state of Texas. The specific locations of the airports are not known at this time. Additionally, the selected providers will be responsible for the siting and design of containment facilities, associated fueling apron, and site drainage as needed for each airport. Work will require frequent contact with a designated representative at each airport and the TxDOT project manager.

### Procedure for Each Airport Location:

When a specific airport is assigned, TxDOT will initiate fee negotiations to contract for design modifications of TxDOT's existing Basis of Design for General Aviation Fuel System Standards for Jet A and/or Avgas systems. Fees negotiated will be for site specific needs including any of the necessary elements listed above. A contract will be offered for the design, bidding and construction phases. The actual construction and installation of the fueling system will be competitively bid and performed under a separate contract. While it is TxDOT's intent to award contracts under this solicitation, the selected providers shall have no cause of action based on the number of contracts, if any, issued. Contracts are expected to be awarded to the selected providers for a period of five years from the date the providers are notified of their selection under this solicitation. A DBE/HUB goal will be individually set for each contract awarded under this solicitation.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Professional Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications may not exceed the number of pages in the format. The AVN-550 consists of eight 8 1/2 x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. **FIRMS SHOULD NOT COMPLETE PAGE 5 "PROJECT DESIGN SCHEDULE" OF THE AVN-550. THE WORK SCHEDULE WILL BE NEGOTIATED WITH THE SELECTED PROVIDERS PER PROJECT AS ASSIGNED. FIRMS SHOULD SIMPLY OMIT THIS PAGE.** A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

### Please note:

**FIVE** completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division no later than August 25, 2015, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of **Beverly Longfellow** using one of the delivery methods below:

#### Overnight Delivery

TxDOT - Aviation  
200 East Riverside Drive  
Austin, Texas 78704

#### Hand Delivery or Courier

TxDOT - Aviation  
150 East Riverside Drive  
5th Floor, South Tower  
Austin, Texas 78704

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of a review of AVN-550s. The committee will review all AVN-550s and rate and rank each. **The Evaluation Criteria for Engineering Qualifications: Fueling Systems** can be found online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. After the rating of qualifications, all firms will be notified of the results. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, the selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow or Amy Slaughter. For technical questions, please contact Ed Mayle or Harry Lorton, Project Managers.

TRD-201502710

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: July 20, 2015



## Aviation Division - Request for Qualifications for Professional Engineering Services

The Clover Acquisition Corporation, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Architectural/Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for the current aviation project as described below.

**Current Project:** Clover Acquisition Corporation; TxDOT CSJ No.: 1512CLOVE.

Scope: Provide engineering/design including construction administration services to

1. Construct enhanced taxiway lighting and signage
2. Construct airport security fencing/gates
3. Prepare an airport entrance road relocation feasibility study

**The DBE goal for the design phase of the current project is 5%. The goal will be re-set for the construction phase.** TxDOT Project Manager is Eusebio Torres.

Future scope work items for engineering/design including construction administration at the Pearland Regional Airport may include the following during the course of the next five years through multiple grants:

Demolish taxiway pavement to improve safety, taxiway drainage improvements, construct airport entrance road, install PAPIs and REILs, clear obstruction Runway 14, Improve RSA and ROFA grading/clearing standards, construct eastside partial parallel taxiway and airfield pavement rehabilitation.

The Clover Acquisition Corporation reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> by selecting "Pearland Regional Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

**SIX** completed copies of Form AVN-550 must be received by TxDOT, Aviation Division no later than August 25, 2015, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan using one of the delivery methods below:

**Overnight Delivery**

TxDOT - Aviation  
200 East Riverside Drive  
Austin, Texas 78704

**Hand Delivery or Courier**

TxDOT - Aviation

150 East Riverside Drive  
5th Floor, South Tower  
Austin, Texas 78704

The consultant selection committee will be composed of airport management representatives and one Aviation Division staff member. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Eusebio Torres, Project Manager.

TRD-201502742  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: July 22, 2015



**Notice of Availability**

Pursuant to Texas Administrative Code, Title 43, §2.108, the Texas Department of Transportation (TxDOT) is advising the public of the availability of the ROD for proposed construction on US 281, from Loop 1604 to Borgfeld Drive in Bexar County, Texas. The Selected Alternative would expand US 281 to a six-lane expressway with partial access-controlled outer lanes. From Loop 1604 to Stone Oak Parkway, the expressway lanes would include two non-toll general purpose lanes with an auxiliary lane plus one managed lane in each direction. The expressway lanes would be situated between three partial access-controlled outer lanes in each direction, also known as frontage roads. From Stone Oak Parkway to Borgfeld Drive, US 281 would ultimately be expanded to a six-lane expressway (three managed lanes in each direction) with two non-toll outer lanes in each direction. The project limits extend from Loop 1604 to Borgfeld Drive, a distance of approximately eight miles.

The ROD explains the selection of the recommended alternative and signifies the completion of the environmental review process.

A digital version of the ROD may be downloaded from the project website at <http://www.411on281.com/us281eis/>. In addition, the ROD is on file and available for review at the following locations: (1) Alamo Regional Mobility Authority (c/o Bexar County Public Works), 233 North Pecos La Trinidad, Suite 420, San Antonio, Texas 78207; (2) Texas Department of Transportation, San Antonio District, 4615 N.W. Loop 410, San Antonio, Texas 78229. For further information, please contact Mr. Carlos Swonke, Director, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416-3001; email: [carlos.swonke@txdot.gov](mailto:carlos.swonke@txdot.gov). TxDOT's normal business hours are 8:00 a.m. - 5:00 p.m., Monday through Friday.

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. §327 and a

Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT.

TRD-201502711

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: July 20, 2015



### Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (TxDOT) is requesting that each municipality subject to the requirements contained in Transportation Code, §707.004 provide the required data to TxDOT **no later than October 31, 2015**, in order for TxDOT to meet the mandated deadline for an annual report to the Texas Legislature.

Pursuant to Transportation Code, §707.004, each municipality operating a photographic traffic signal enforcement system or planning to install such a system must compile and submit to the department certain statistical information. Before installing such a system, the municipality is required to submit a written report on the number and type of traffic crashes that have occurred at the intersection over the last 18 months prior to installation. The municipality is also required to provide annual reports to TxDOT after installation, showing the number and type of crashes that have occurred at the intersection.

TxDOT is required by Transportation Code, §707.004 to produce an annual report of the information submitted to TxDOT by December 1 of each year.

TxDOT has created a web page detailing municipal reporting requirements, and to allow the required data to be submitted electronically:

<http://www.txdot.gov/driver/laws/red-light.html>.

For additional information, contact TxDOT, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 486-5702.

TRD-201502713

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: July 20, 2015



### Texas Water Development Board

#### Applications for July 2015

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21754, a request from the City of Anton, P.O. Box 127, Anton, TX 79313-0127, received April 24, 2015, for a \$3,000,000 loan from the Texas Water Development Fund to finance planning, acquisition, design, and construction of a wastewater treatment plant and water system improvements

Project ID #21524, a request from Fort Bend County Fresh Water Supply District No. 1, P.O. Box 739, Fresno, TX 77545, received April 7, 2015, for an \$8,000,000 loan from the Texas Water Development Fund to finance design and construction costs for new water lines and water plant expansion.

Project ID #73714, a request from the City of Hudson, 201 Mt. Carmel Rd., Hudson, TX 75904-8661, received April 13, 2015, for a \$410,000

loan from the Clean Water State Revolving Fund to finance planning and design costs for the replacement of an existing wastewater treatment plant.

Project ID #10420, a request from the City of Tahoka, P.O. Box 300, Tahoka, TX 79373-0300, received March 16, 2015, for a \$4,443,000 grant and \$1,871,000 loan from the Economically Distressed Areas Program to finance the construction of water distribution system improvements.

Project ID #73715, a request from the Greater Texoma Utility Authority on behalf of the City of Whitewright, 5100 Airport Dr., Denison, TX 75020-8448, received April 23, 2015, for a \$640,000 loan from the Clean Water State Revolving Fund to finance the planning, acquisition, design, and construction of wastewater system improvements.

Project ID #51008, a request from Coastal Water Authority, 4828 Loop Central Dr., Ste. 1000, Houston, TX 77081, received June 5, 2015, for financial assistance in the amount of \$300,000,000 consisting of \$276,740,000 in multi-year Board Participation and \$23,260,000 in a low interest loan from the State Water Implementation Revenue Fund for Texas to finance the construction of the Luce Bayou Inter-basin Transfer Project.

Project ID #51021, a request from the City of Houston, 3648 FM 1960 West, Suite 110, Houston, TX 77068, received June 2, 2015, for a \$296,125,000 multi-year loan commitment from the State Water Implementation Revenue Fund for Texas to finance the planning, design, and construction of the Northeast Water Purification Plant expansion and the Second Source Phase I water transmission line.

Project ID #51004, a request from North Harris County Regional Water Authority, 3648 FM 1960 West, Suite 110, Houston, TX 77068, received June 5, 2015, for a \$953,405,000 multi-year loan commitment from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, design and construction of the Northeast Water Purification Plant expansion, the Second Source Phases I and II water transmission lines, and the internal distribution lines.

Project ID #51009, a request from Central Harris County Regional Water Authority, 3648 Cypress Creek Pkwy., Ste. 110, Houston, TX 77068, received June 5, 2015, for a \$41,630,000 multi-year loan commitment from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, design and construction of the Northeast Water Purification Plant expansion and the Second Source Phases I and II water transmission lines.

Project ID #51023, a request from the West Harris County Regional Water Authority, 9 Greenway Plaza, Ste. 1100, Houston, TX 77046, received June 5, 2015, for a \$812,140,000 multi-year loan commitment from the State Water Implementation Revenue Fund for Texas to finance the planning, design, and construction of the Northeast Water Purification Plant expansion, the Second Source transmission line, and internal distribution lines.

Project ID Nos. 51022 and 51023, a request from the North Fort Bend Water Authority, 9 Greenway Plaza, Ste. 1100, Houston, TX 77046, received June 5, 2015, for a \$555,845,000 multi-year loan commitment from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, design, and construction of the Northeast Water Purification Plant expansion and the Second Source Phase transmission line.

Project ID #51012, a request from the El Paso Water Utilities Public Service Board, P.O. Box 511, El Paso, TX 79961-0001, received June 5, 2015, for a \$50,000,000 loan from the State Water Implementation Revenue Fund for Texas to finance land and water rights acquisition.

Project ID #51018, a request from the City of Marfa, P.O. Box 787, Marfa, TX 79843-0787, received June 5, 2015, for a \$705,000 loan from the State Water Implementation Revenue Fund for Texas to finance the planning, design, and construction of a well.

Project ID #51002, a request from the Greater Texoma Utility Authority on behalf of the City of Tom Bean, 5100 Airport Dr., Denison, TX 75020-8448, received June 2, 2015, for a \$1,210,000 loan from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, design, and construction of a new water well and related appurtenances.

Project ID #51011, a request from the Lone Star Regional Water Authority, P.O. Box 554, Jarrell, TX 76537, received June 5, 2015, for financial assistance totaling \$27,640,000 consisting of \$5,530,000 in low interest loans and \$22,110,000 in Board Participation from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, design, and construction of a water transmission pipeline, pump stations, storage tanks, and related appurtenances.

Project ID #51020, a request from the Palo Pinto County Municipal Water District #1, P.O. Box 460, Mineral Wells, TX 76068-0460, received June 5, 2015, for a loan in the amount of \$17,100,000 from the State Water Implementation Revenue Fund to finance acquisition, design, and utility relocation for the Turkey Peak Reservoir.

Project ID #51016, a request from the City of Bedford, 1813 Reliance Pkwy., Bedford, TX 76021, received June 5, 2015, for a \$90,000,000 multi-year loan commitment from the State Water Implementation Revenue Fund for Texas to finance the construction of water distribution piping and water meters with new Automatic Meter Readers.

Project ID #51025, a request from the North Texas Municipal Water District, 12221 Merit Dr., Ste. 1400, Dallas, TX 75251-2280, received June 5, 2015, for a \$82,105,000 loan from the State Water Implementation Revenue Fund for Texas to finance the acquisition and construction work ancillary to the Lower Bois d'Arc Creek Reservoir.

Project ID #51024, a request from the Tarrant Regional Water District, 800 E. Northside Drive, Ft. Worth, TX 76102-1097, received June 2, 2015, for loans totaling \$440,000,000 from the State Water Implementation Revenue Fund for Texas to finance the acquisition, design, and construction of an integrated pipeline project.

Project ID #51001 a request from the Upper Trinity Regional Water District, P.O. Drawer 305, Lewisville, TX 75067, received June 2, 2015, for financial assistance totaling \$44,680,000 consisting of \$15,565,000 in Board Participation and \$29,115,000 deferred loan from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, and design for the proposed Lake Ralph Hall reservoir.

Project ID #51005, a request from the Canyon Regional Water Authority, 850 Lakeside Pass Drive, New Braunfels, TX 78130-8282, received June 2, 2015, for a \$55,000,000 loan from the State Water Implementation Revenue Fund for Texas to finance the design and construction phases related to the expansion of the Wells Ranch Supply Project.

Project ID #51014, a request from the City of Fort Worth, 1000 Throckmorton, Ft. Worth, TX 76102-6312, received June 5, 2015, for a \$76,000,000 multi-year loan commitment from the State Water Implementation Revenue Fund for Texas to finance planning and construction costs associated with implementation of an advanced metering infrastructure project.

Project ID #51019, a request from the Guadalupe-Blanco River Authority, 4801 NW Loop 410, Suite 725, San Antonio, TX 78229, received June 5, 2015, for a deferred loan in the amount of \$8,000,000 from the State Water Implementation Revenue Fund for Texas to finance planning phase costs associated with the Integrated Water Power Project.

Project ID #51006, a request from the Hays Caldwell Public Utility Agency, 630 Hopkins, San Marcos, TX 78666, received June 5, 2015, for a \$12,500,000 loan from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, design, and construction of an interconnection between the cities of Kyle and Buda.

Project ID #51013, a request from the Brazosport Water Authority, 1251 FM 2004, Lake Jackson, TX 77566, received June 5, 2015, for a \$28,300,000 multi-year loan commitment from the State Water Implementation Revenue Fund for Texas to finance the planning, design and construction of a brackish groundwater reverse osmosis water treatment plant and wells.

Project ID #51007, a request from the Hidalgo County Irrigation District No. 1, received June 5, 2015, for a \$7,100,000 loan from the State Water Implementation Revenue Fund for Texas to finance the planning, design, and construction of an irrigation conveyance system improvements project.

TRD-201502685  
Les Trobman  
General Counsel  
Texas Water Development Board  
Filed: July 15, 2015

## ◆ ◆ ◆ Workforce Solutions Borderplex

### Request for Proposal

Workforce Solutions Borderplex, Inc. is soliciting proposals from qualified organizations/individuals to provide and deliver Workforce System Redesign/Reform Services. Request for Proposal (RFP) #PY15-RFP-200-132-RRD may be requested in writing or picked up in person on and after 12:00 p.m. MST, Monday, July 20, 2015, at the Board offices located at 300 E Main, Suite 800, El Paso, Texas 79901. The RFP will also be available on the Board's Web Site ([www.borderplexjobs.com](http://www.borderplexjobs.com)) on and after the above date and time.

A Respondents' Conference is scheduled for this procurement. The conference will be held at 10:30 a.m. MST, Monday, July 27, 2015, in the Board Conference Room located at the above address or join via WebEx conference call. The conference is not mandatory but strongly encouraged. Responses to this RFP must be physically received by the Procurement Department at the Board offices no later than 5:00 p.m. MST, August 19, 2015.

**Questions pertaining to this RFP may be directed to Procurement Department at (915) 887-2200 or via email at [procurement@borderplexjobs.com](mailto:procurement@borderplexjobs.com).**

TRD-201502681  
Andrea Kitchen  
Purchaser  
Workforce Solutions Borderplex  
Filed: July 15, 2015

## 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)

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