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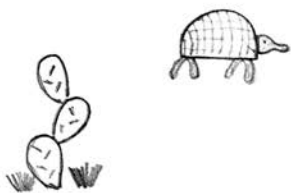
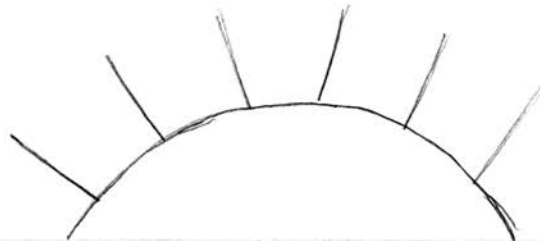
# TEXAS REGISTER

Volume 40 Number 42

October 16, 2015

Pages 7161 - 7296

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

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***Texas Register* (ISSN 0362-4781, USPS 12-0090)** is published weekly (52 times per year) for \$259.00 by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 102, P O Box 1710, Latham, NY 12110. Periodical postage is paid at Albany, NY, and at additional mailing offices. Postmaster: Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

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The *Texas Register* is published under the Government Code, Title 10, Chapter 2002.

# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 12887  
Austin, TX 78711  
(512) 463-5561  
FAX (512) 463-5569

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

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# Open Meetings

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

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

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

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

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

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

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

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.texas.gov>

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

# THE ATTORNEY GENERAL

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

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

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

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

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Requests for Opinions

**RQ-0056-KP**

**Requestor:**

The Honorable Greg Lowery

District Attorney, Jack & Wise Counties

101 North Trinity, Suite 200

Decatur, Texas 76234

Re: Notice requirements for holding an executive session and related questions (RQ-0056-KP)

**Briefs requested by November 2, 2015**

**RQ-0057-KP**

**Requestor:**

Mr. David Reilly, Executive Director

Texas Juvenile Justice Department

Post Office Box 12757

Austin, Texas 78711

Re: Applicability of expunction orders under section 54.0541 of the Family Code to juvenile records (RQ-0057-KP)

**Briefs requested by November 2, 2015**

**RQ-0058-KP**

**Requestor:**

The Honorable Micheal E. Jimerson

Rusk County & District Attorney

115 North Main, Suite 302

Henderson, Texas 75652

Re: Whether section 202.052 of the Estates Code requires citation by publication in all actions to determine heirship (RQ-0058-KP)

**Briefs requested by November 3, 2015**

**RQ-0059-KP**

**Requestor:**

The Honorable Charles Perry

Chair, Committee on Agriculture, Water, and Rural Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78701-2068

Re: Whether a police department or sheriff's office may display the national motto, "In God We Trust," on its patrol vehicles (RQ-0059-KP)

**Briefs requested by October 19, 2015**

**RQ-0060-KP**

**Requestor:**

The Honorable Harold Dutton

Chair, Committee on Juvenile Justice and Family Issues

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78711-2910

Re: Constitutionality of SB 1876, relating to the appointment of attorneys ad litem, guardians ad litem, and mediators (RQ-0060-KP)

**Briefs requested by November 3, 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-201504165

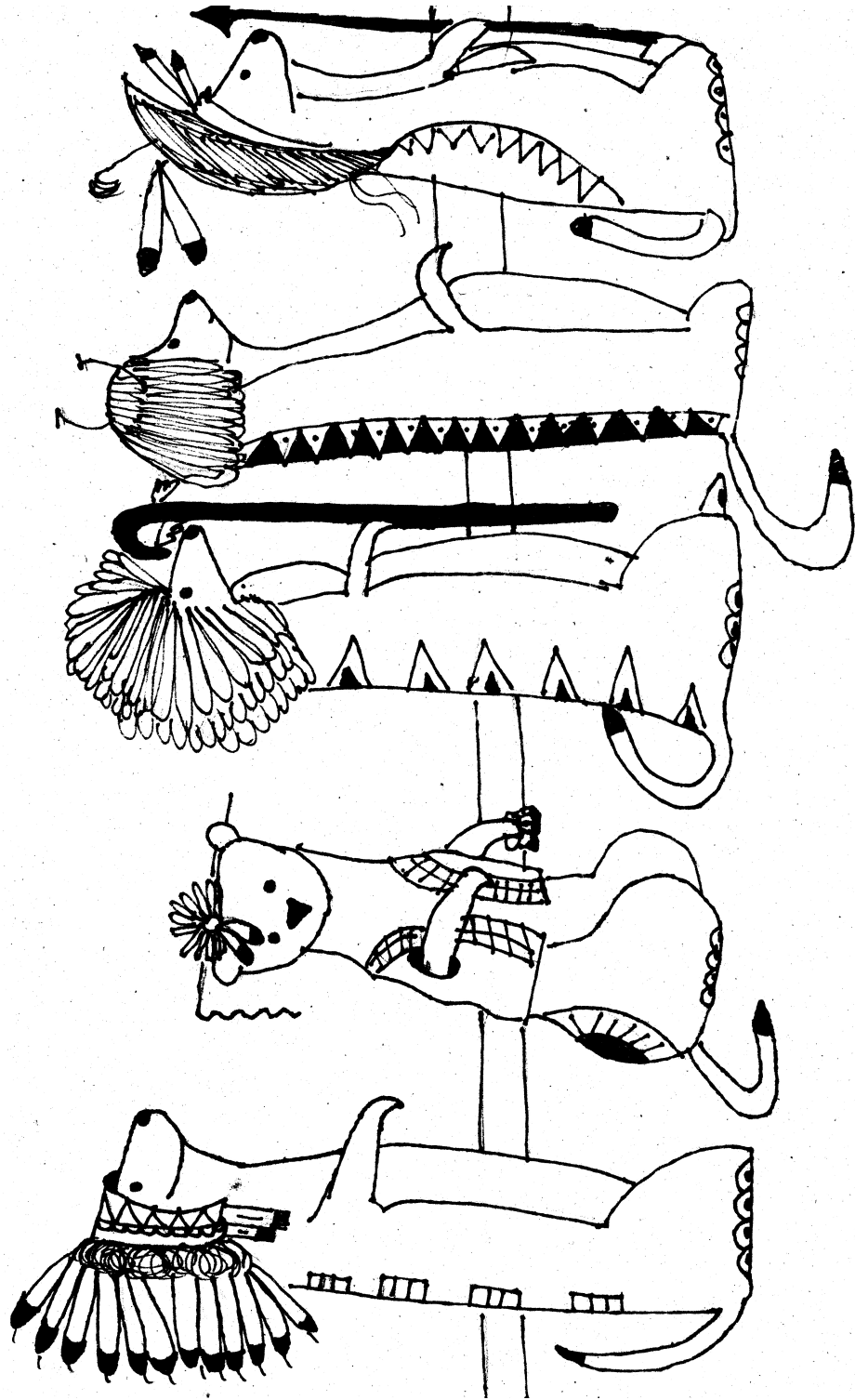
Amanda Crawford

General Counsel

Office of the Attorney General

Filed: October 6, 2015

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

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

#### CHAPTER 81. ELECTIONS

##### SUBCHAPTER A. VOTER REGISTRATION

###### 1 TAC §81.6

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

The Office of the Secretary of State, Elections Division, proposes to repeal 1 TAC §81.6. Section 81.6, as adopted in 1986 (see 11 TexReg 2044 (May 6, 1986); 11 TexReg 2740 (June 13, 1986)), provides as follows:

"The voter registrar shall notify each principal of each high school located in the registrar's county of the principal's duties as high school deputy registrar under the Texas Election Code, §13.046. The registrar shall provide to such high school principals the registration forms, notices, and receipt forms required for performance of high school deputy registrar's duties under §13.046."

As this Office has previously advised election authorities, and as demonstrated in the January 1999 adoption of the amendment to, and the current language of, 1 TAC §81.7, as well as HB 127 (74th Regular Session), §81.6 was superseded by §81.7 and Section 4 of HB 127, and is obsolete. See, e.g., 23 TexReg 8597 (August 21, 1998); 24 TexReg 553 (January 29, 1999); 1 TAC §81.7 (referring to the procurement of "voter registration applications" and "notice forms" from school board administrators or the Secretary of State, and providing that contacting the Secretary of State for registration applications, as opposed to the county voter registrar, is "essential"); Act of May 28, 1995, 74th Leg., R.S., ch. 797, 1995 Tex. Gen. Laws 4153 (implementing the National Voter Registration Act and, in Section 4, specifically eliminating a reference to §13.040 of the Texas Election Code (dealing with receipt forms) in the list of sections of Chapter 13 of the Texas Election Code which apply to the submission and delivery of registration applications under §13.046 (dealing with high school deputy registrars)).

Keith Ingram, Director of Elections, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Ingram has determined also that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to eliminate an unnecessary

rule, which was superseded by administrative rule and legislative action in 1999 and 1995, respectively, and which, accordingly, is obsolete. There will be no adverse economic impact for small businesses or micro businesses.

#### Request for Comments

Comments on the repeal may be submitted to Keith Ingram, Director of Elections, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via email to: [elections@sos.texas.gov](mailto:elections@sos.texas.gov). For comments submitted electronically, please include "Proposed Repeal of Rule §81.6" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposed repeal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed repeal. Questions concerning the proposed repeal may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The repeal is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. The repeal is also proposed under the Texas Election Code, §13.046(d) and (h), which permit the Office of the Texas Secretary of State to prescribe rules and procedures to implement §13.046 of the Texas Election Code.

No other code or statute is affected by the proposal.

#### §81.6. Notification to High School Deputies.

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 October 1, 2015.

TRD-201504098

Lindsey Wolf

General Counsel

Office of the Secretary of State

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 463-5650

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION

## SUBCHAPTER BB. ARCHITECTURE FIELD OF STUDY ADVISORY COMMITTEE

### 19 TAC §§1.9501 - 1.9507

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§1.9501 - 1.9507 concerning Architecture Field of Study Advisory Committee. The proposed new rules authorize the Board to create an advisory committee to develop an Architecture field of study. The newly added rules will affect students when the Architecture field of study is adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an Architecture degree and improved transferability and applicability of courses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@theceb.state.tx.us](mailto:AQWComments@theceb.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, Chapter 61, §61.823(a), and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop fields of study curricula with the assistance of advisory committees.

The new rules affect the implementation of Texas Education Code, Chapter 61.

#### §1.9501. Authority and Specific Purposes of the Architecture Field of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.823(a).

(b) Purposes. The Architecture Field of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the Architecture field of study curricula.

#### §1.9502. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Field of Study Curricula--The block of courses which may be transferred to a general academic teaching institution and must be substituted for that institution's lower division requirements for the Architecture degree program into which the student transfers, and the student shall receive full academic credit toward the degree program for the block of courses transferred.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(8).

#### §1.9503. Committee Membership and Officers.

(a) The advisory committee shall be equitably composed of representatives of institutions of higher education.

(b) Each university system or institution of higher education which offers a degree program for which a field of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution in a manner that permits direct input from faculty representatives in the field of study before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of Committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

#### §1.9504. Duration.

The Committee shall be abolished no later than January 31, 2019 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

#### §1.9505. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

#### §1.9506. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Architecture Field of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Architecture Field of Study Curricula; and

(3) Any other issues related to the Architecture Field of Study Curricula as determined by the Board.

#### §1.9507. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board as necessary. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.





## CHAPTER 26. PROGRAMS OF STUDY SUBCHAPTER A. AGRICULTURE, FOOD AND NATURAL RESOURCES PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.101 - 26.107

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Chapter 26, Programs of Study, Subchapter A, Agriculture, Food, and Natural Resources Programs of Study Advisory Committee, §§26.101 - 26.107. The proposed new sections authorize the Board to create an advisory committee to develop programs of study specific to the Agriculture, Food, and Natural Resources Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new sections.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in Agriculture, Food, and Natural Resources Career Cluster and improved transferability and applicability of courses from college to college. 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 no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.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, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections do not affect the Texas Education Code.

#### §26.101. Authority and Specific Purposes of the Agriculture, Food and Natural Resources Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Agriculture, Food and Natural Resources Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

#### §26.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and (7).

#### §26.103. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

#### §26.104. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

#### §26.105. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

#### §26.106. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Agriculture, Food and Natural Resources Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Agriculture, Food and Natural Resources Programs of Study Curricula; and

(3) Any other issues related to the Agriculture, Food and Natural Resources Programs of Study Curricula as determined by the Board.

§26.107. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504081

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 15, 2015

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



## SUBCHAPTER B. ARCHITECTURE AND CONSTRUCTION PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.121 - 26.127

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Chapter 26, Programs of Study, Subchapter B, Architecture and Construction Programs of Study Advisory Committee, §§26.121 - 26.127. The proposed new sections authorize the Board to create an advisory committee to develop programs of study specific to the Architecture and Construction Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in Architecture and Construction Career Cluster and improved transferability and applicability of courses from college to college. 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 no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher

Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.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, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections do not affect the Texas Education Code.

§26.121. Authority and Specific Purposes of the Architecture and Construction Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Architecture and Construction Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and (7).

§26.123. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.124. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.125. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.126. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Architecture and Construction Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Architecture and Construction Programs of Study Curricula; and

(3) Any other issues related to the Architecture and Construction Programs of Study Curricula as determined by the Board.

§26.127. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504082

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 15, 2015

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



**SUBCHAPTER C. ARTS, AUDIO/VISUAL  
TECHNOLOGY AND COMMUNICATIONS  
PROGRAMS OF STUDY ADVISORY  
COMMITTEE**

**19 TAC §§26.141 - 26.147**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Chapter 26, Programs of Study, Subchapter C, Arts, Audio/Visual, Technology, and Communications Programs of Study Advisory Committee, §§26.141 - 26.147. The proposed new rules authorize the Board to create an advisory

committee to develop programs of study specific to the Arts, Audio/Visual, Technology, and Communications Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new sections.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in Arts, Audio/Visual, Technology, and Communications Career Cluster and improved transferability and applicability of courses from college to college. 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 no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.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, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections do not affect the Texas Education Code.

§26.141. Authority and Specific Purposes of the Arts, Audio/Visual Technology and Communications Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Arts, Audio/Visual Technology and Communications Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.142. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and (7).

§26.143. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.144. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.145. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.146. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Arts, Audio/Visual Technology and Communications Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Arts, Audio/Visual Technology and Communications Programs of Study Curricula; and

(3) Any other issues related to the Arts, Audio/Visual Technology and Communications Programs of Study Curricula as determined by the Board.

§26.147. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504083

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 15, 2015

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

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SUBCHAPTER D. BUSINESS MANAGEMENT  
AND ADMINISTRATION PROGRAMS OF  
STUDY ADVISORY COMMITTEE

**19 TAC §§26.161 - 26.167**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Chapter 26, Programs of Study, Subchapter D, Business Management and Administration Programs of Study Advisory Committee, §§26.161 - 26.167. The proposed new rules authorize the Board to create an advisory committee to develop programs of study specific to the Business Management and Administration Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in Business Management and Administration Career Cluster and improved transferability and applicability of courses from college to college. 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 no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.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, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections do not affect the Texas Education Code.

§26.161. Authority and Specific Purposes of the Business Management and Administration Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.6235.

(b) Purpose. The Business Management and Administration Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.162. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and (7).

*§26.163. Committee Membership and Officers.*

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

*§26.164. Duration.*

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

*§26.165. Meetings.*

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

*§26.166. Tasks Assigned to the Committee.*

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Business Management and Administration Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Business Management and Administration Programs of Study Curricula; and

(3) Any other issues related to the Business Management and Administration Programs of Study Curricula as determined by the Board.

*§26.167. Report to the Board; Evaluation of Committee Costs and Effectiveness.*

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504084

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 15, 2015

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



## SUBCHAPTER E. EDUCATION AND TRAINING PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.181 - 26.187

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Chapter 26, Programs of Study, Subchapter E, Education and Training Programs of Study Advisory Committee, §§26.181 - 26.187. The proposed new rules authorize the Board to create an advisory committee to develop programs of study specific to the Education and Training Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in Education and Training Career Cluster and improved transferability and applicability of courses from college to college. 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 no impact on local employment.

Comments on the proposed new rules may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas

78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.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, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections do not affect the Texas Education Code.

§26.181. Authority and Specific Purposes of the Education and Training Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.6235.

(b) Purpose. The Education and Training Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.182. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and (7).

§26.183. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.184. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.185. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.186. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Education and Training Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Education and Training Programs of Study Curricula; and

(3) Any other issues related to the Education and Training Programs of Study Curricula as determined by the Board.

§26.187. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504085

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 15, 2015

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



## SUBCHAPTER F. FINANCE PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.201 - 26.207

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Chapter 26, Programs of Study, Subchapter F, Finance Programs of Study Advisory Committee, §§26.201 - 26.207. The proposed new rules authorize the Board to create an advisory committee to develop programs of study specific to the Finance Career Cluster. The newly added rules will affect

students when programs of study developed by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Finance Career Cluster and improved transferability and applicability of courses from college to college. 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 no impact on local employment.

Comments on the proposed new rules may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rules are proposed under the Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new rules do not affect the Texas Education Code.

§26.201. Authority and Specific Purposes of the Finance Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.6235.

(b) Purpose. The Finance Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.202. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and (7).

§26.203. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry,

and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.204. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.205. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.206. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Finance Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Finance Programs of Study Curricula; and

(3) Any other issues related to the Finance Programs of Study Curricula as determined by the Board.

§26.207. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504086



## SUBCHAPTER G. GOVERNMENT AND PUBLIC ADMINISTRATION PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.221 - 26.227

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Chapter 26, Programs of Study, Subchapter G, Government and Public Administration Programs of Study Advisory Committee, §§26.221 - 26.227. The proposed new rules authorize the Board to create an advisory committee to develop programs of study specific to the Government and Public Administration Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Government and Public Administration Career Cluster and improved transferability and applicability of courses from college to college. 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 no impact on local employment.

Comments on the proposed new rules may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rules are proposed under the Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new rules do not affect the Texas Education Code.

§26.221. Authority and Specific Purposes of the Government and Public Administration Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.6235.

(b) Purpose. The Government and Public Administration Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.222. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and (7).

§26.223. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.224. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.225. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.226. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Government and Public Administration Programs of Study Curricula;



(2) Provide Board staff with feedback about processes and procedures related to the Government and Public Administration Programs of Study Curricula; and

(3) Any other issues related to the Government and Public Administration Programs of Study Curricula as determined by the Board.

§26.227. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504087

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 15, 2015

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



## SUBCHAPTER H. HEALTH SCIENCE PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.241 - 26.247

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new Chapter 26, Programs of Study, Subchapter H, Health Science Programs of Study Advisory Committee, §§26.241 - 26.247. The proposed new rules authorize the Board to create an advisory committee to develop programs of study specific to the Health Science Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Health Science Career Cluster and improved transferability and applicability of courses from college to college. 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 no impact on local employment.

Comments on the proposed new rules may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas

78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rules are proposed under the Texas Education Code, Chapter 61, §61.8235, pursuant to House Bill 2628 enacted by the 84th Texas Legislative Session, and Texas Government Code, Chapter 2110, §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new rules do not affect the Texas Education Code.

§26.241. Authority and Specific Purposes of the Health Science Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.6235.

(b) Purpose. The Health Science Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.242. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

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

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and (7).

§26.243. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(f) The number of committee members shall not exceed twenty-four (24).

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.244. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.245. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.246. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Health Science Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Health Science Programs of Study Curricula; and

(3) Any other issues related to the Health Science Programs of Study Curricula as determined by the Board.

§26.247. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504088

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: November 15, 2015

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



**PART 2. TEXAS EDUCATION AGENCY  
CHAPTER 101. ASSESSMENT  
SUBCHAPTER CC. COMMISSIONER'S  
RULES CONCERNING IMPLEMENTATION OF  
THE ACADEMIC CONTENT AREAS TESTING  
PROGRAM  
DIVISION 4. PERFORMANCE STANDARDS**

**19 TAC §101.3041**

The Texas Education Agency (TEA) proposes an amendment to §101.3041, concerning student assessment. The section addresses performance standards for the State of Texas Assessments of Academic Readiness (STAAR®). The proposed amendment would establish a revised performance standard progression for the State of Texas Assessments of Academic Readiness (STAAR®) program. The proposed amendment would also implement the first step of the new performance standard progression for the 2015-2016 school year. In addition, the proposed amendment would implement performance standards for the STAAR® Alternate 2 Grades 3-8 and end-of-course (EOC) assessments.

In 2014, to give educators additional time to make the significant changes in instruction needed to raise the level of performance of all Texas students, the commissioner made four decisions related to STAAR® performance standards: 1) the phase-in 1 standard would be kept in place for the 2013-2014 and 2014-2015 school years; 2) the phase-in 2 standard would be redefined and implemented in the 2015-2016 school year; 3) a phase-in 3 standard would be created to allow for a more gradual increase of the phase-in standards; and 4) the final recommended standard would take effect in the 2021-2022 school year.

Given the STAAR® performance results for 2012 through 2015, the commissioner of education proposes the replacement of the current phase-in schedule with a standard progression approach from the 2015-2016 school year through the 2021-2022 school year, increasing performance standards annually. Intended to minimize any abrupt single-year increase in the required Level II performance standard, the standard progression approach would still allow annual, consistent, incremental improvements toward the final recommended Level II performance standard in the 2021-2022 school year.

Similar to the original method used to develop the phase-in standards currently in effect, the performance standard progression is based on the standard deviations (SDs) of scale scores. For the 2015-2016 school year, step 1 of the performance progression would modestly increase the performance standard (.1 SD) for all assessments except the English I and English II end-of-course assessments. The 2015-2016 performance standard would, therefore, be set at .9 SD below the panel-recommended standard. In contrast, the phase-in 2 standard in the current commissioner rule would increase to .7 SD below the panel-recommended standard.

In each subsequent year after the 2015-2016 school year, the performance standard would increase by .15 SD, so the standard in the 2016-2017 school year would fall .75 SD below the panel recommendation, and so on, until the final recommended standard is implemented in the 2021-2022 school year.

The phase-in 1 standards for the English I and English II assessments were established originally at 0.5 SD below the panel-recommended standard. Similar to the other STAAR® assessments, for the 2015-2016 school year, step 1 of the standard progression would be adjusted (.05 SD). The resulting 2015-2016 standard for these assessments would be .45 SD below the final recommended standard. In contrast, the phase-in 2 standard in current commissioner rule would increase to 0.35 SD below the final recommended standard. In each subsequent year, the standard would increase by .075 SD until implementation of the final recommended standard in the 2021-2022 school year.

The proposed standard progression is calculated on scale scores, not raw scores. It is critical to note that raw score increments may vary from year to year because cut scores are defined by scale scores, not raw scores, and corresponding raw score cuts are influenced by the difficulty of test items selected for use in any given year.

The Level III standard, advanced academic performance, remains unchanged.

Currently, the figures adopted in rule reflect the general assessments. The proposed amendment would reorganize subsections (b) and (c) to adopt figures for the general and alternate assessments. The STAAR® general education assessment performance standards would be reorganized as Figure: 19 TAC §101.3041(b)(1) for the Grades 3-8 assessments and Figure: 19 TAC §101.3041(c)(1) for the EOC assessments. The alternate Grades 3-8 and EOC assessments would be formally implemented in Figure: 19 TAC §101.3041(b)(2) for Grades 3-8 and Figure: 19 TAC §101.3041(c)(2) for the EOC assessments.

As a result of House Bill 5, 83rd Texas Legislature, Regular Session, 2013, the TEA redesigned the STAAR® Alternate assessment to meet the diverse needs of students with significant cognitive disabilities enrolled in Grades 3-8 and EOC subjects. Named STAAR® Alternate 2, the new assessment does not require teachers to prepare tasks or materials.

To meet requirements of the legislation and maintain an appropriate assessment for students with significant cognitive disabilities, a question-based approach to the STAAR® Alternate 2 was implemented. The assessment consists of 24 scripted questions. The test materials include a test administrator booklet with the scripted questions and guidelines for how the test will be administered and a student booklet that contains stimulus images and text needed for the student to select answers. This design allows for standardization of the assessment and eliminates the need for teachers to prepare tasks or materials. First administered in February 2015, STAAR Alternate 2 standards were established in spring 2015.

The STAAR® Alternate 2 assessment academic performance levels are: Level III: Accomplished Academic Performance; Level II: Satisfactory Academic Performance; and Level I: Developing Academic Performance.

Level III: Accomplished Academic Performance indicates a student performed at a level that was well above passing. A student was able to demonstrate a strong understanding of the knowledge and skills that are linked to the content being measured at this grade or course. Students within this category exhibit the ability to use higher-level thinking and more complex skills, which includes making inferences, comparisons, and solving multi-step problems. With support, these students have a high likelihood of showing progress in the next grade or course.

Level II: Satisfactory Academic Performance indicates a student has performed at a level that was at or above passing. A student was able to demonstrate sufficient understanding of the knowledge and skills that are linked to the content being measured at this grade or course. Students within this category generally exhibit the ability to determine relationships, integrate multiple pieces of information, extend details, identify concepts, and match concepts that are similar. With continued support, these students have a reasonable likelihood of showing progress in the next grade or course.

Level I: Developing Academic Performance indicates a student performed at a level that was below passing. A student at this level was able to acknowledge concepts, but the student demonstrated a minimal or inconsistent understanding of the knowledge and skills that are linked to the content being measured at this grade or course. Even with continued support, these students are in need of significant intervention to show progress in the next grade or course.

The proposed rule action would have no procedural and reporting implications beyond those that apply to all Texas students. The proposed rule action would have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students.

**FISCAL NOTE.** Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

**PUBLIC BENEFIT/COST NOTE.** Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be implementation of the STAAR® performance standard progression approach for all STAAR® assessments in Grades 3-8 and end of course. The proposed rule action would also implement into rule the STAAR® Alternate 2 performance standards that were established in spring 2015. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES.** There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**REQUEST FOR PUBLIC COMMENT.** The public comment period on the proposal begins October 16, 2015, and ends November 16, 2015. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 16, 2015.

**STATUTORY AUTHORITY.** The amendment is proposed under the Texas Education Code (TEC), §39.0241(a), which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments, and the TEC, §39.025(a), which authorizes the commissioner to adopt rules requiring a student in the foundation high school program under TEC, §28.025, to be administered an end-of-course assessment instrument listed in TEC, §39.023(c), only for a course in which the student is enrolled and for which an end-of-course assessment instrument is administered. A student is required to achieve a scale score that indicates satisfactory performance, as determined by the commissioner under TEC, §39.0241(a), on each end-of-course assessment instrument administered to the

student. TEC, §39.023(b-1), requires the agency to redevelop the STAAR® Alternate and set new performance standards for those assessments.

CROSS REFERENCE TO STATUTE. The amendment implements the TEC, §§39.023(b-1), 39.0241(a), and 39.025(a), as amended by House Bill 2349, 84th Texas Legislature, 2015.

§101.3041. *Performance Standards.*

(a) The commissioner of education shall determine the level of performance considered to be satisfactory on the assessment instruments. The figures in this section identify the performance standards established by the commissioner for state-developed assessments, as required by the Texas Education Code, Chapter 39, Subchapter B, for all grades, assessments, and subjects.

~~[(1) For the 2011-2012 through 2014-2015 school years, the phase-in 1 standard shall be implemented for the general assessments identified in the figures in subsections (b) and (c) of this section.]~~

~~[(2) For the 2015-2016 through 2017-2018 school years, the phase-in 2 standard shall be implemented for the general assessments identified in the figures in subsections (b) and (c) of this section.]~~

~~[(3) For the 2018-2019 through 2020-2021 school years, the phase-in 3 standard shall be implemented for the general assessments identified in the figures in subsections (b) and (c) of this section.]~~

~~[(4) Beginning with the 2021-2022 school year and for each school year thereafter, the final recommended standard shall be implemented for the general assessments identified in the figures in subsections (b) and (c) of this section.]~~

(b) The figures [figure] in this subsection identify [identifies] the performance standards established by the commissioner for the State of Texas Assessments of Academic Readiness (STAAR®) general and alternate assessments at Grades 3-8.  
[Figure: 19 TAC §101.3041(b)]

(1) The figure in this paragraph identifies the STAAR® general education performance standards at Grades 3-8.  
Figure: 19 TAC §101.3041(b)(1)

(2) The figure in this paragraph identifies the STAAR® Alternate 2 performance standards at Grades 3-8.  
Figure: 19 TAC §101.3041(b)(2)

(c) For students first enrolled in Grade 9 or below in the 2011-2012 school year, the figures [figure] in this subsection identify [identifies] the performance standards established by the commissioner for the STAAR® end-of-course (EOC) general and alternate assessments. The standard in place when a student first takes an EOC assessment is the standard that will be maintained on all EOC assessments throughout the student's high school career.  
[Figure: 19 TAC §101.3041(c)]

(1) The figure in this paragraph identifies the EOC general education assessment performance standards.  
Figure: 19 TAC §101.3041(c)(1)

(2) The figure in this paragraph identifies the EOC alternate assessment performance standards.  
Figure: 19 TAC §101.3041(c)(2)

(d) For students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year, the figure in this subsection identifies the performance standards established by the commissioner for the Texas Assessment of Knowledge and Skills exit level. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student's high school career.

Figure: 19 TAC §101.3041(d) (No change.)

(e) The Texas Education Agency shall post annually to its website a 100-point score conversion table after the STAAR® assessment spring administrations. The 100-point scale is defined using percentiles, which represent the percentage of students across the state that took the assessment and received a scale score less than the scale score of interest. The percentile is based on the performance of students who took the paper, online, Braille, and L versions of the assessment during the spring administration of any given year.

(1) The following formula is used to calculate the percentile  $p(S)$  for a scale score  $S$ :  $p(S) = x/N \times 100$ .

(2) In the formula in paragraph (1) of this subsection,  $N$  is the total number of students who took the tests, and  $x$  is the number of students with scale scores less than  $S$ . If the calculated percentile is not a whole number, then it is rounded down to the closest whole number.

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 October 5, 2015.

TRD-201504120

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 15, 2015

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

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**TITLE 34. PUBLIC FINANCE**

**PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS**

**CHAPTER 25. MEMBERSHIP CREDIT SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP**

**34 TAC §§25.1, 25.4, 25.6**

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.1 concerning service eligible for TRS membership, §25.4 concerning substitutes, and §25.6 concerning part-time or temporary employment in Chapter 25, Subchapter A of TRS' rules. Chapter 25 concerns membership credit, and Subchapter A defines employment for TRS eligibility purposes and establishes a standard for full-time employment that is eligible for membership in TRS. The proposed amendments to §§25.1, 25.4, and 25.6 reflect statutory changes in the plan's terms adopted during the most recent legislative session and issues identified in the TRS Enterprise Application Modernization (TEAM) program while developing requirements for the new system.

The proposed changes to §25.1 reflect statutory changes adopted in HB 2974 (84th Legislature, 2015) that require membership to be established through employment with a single employer and clarify how to determine membership eligibility for employment in institutions of higher education (including community and junior colleges) of an instructor of classes that are taken to prepare the student for college level work but the class is not eligible for college credit.

The proposed changes to §25.4 clarify that employment as a substitute is not eligible for membership but service credit may be purchased for 90 days of employment as a substitute in a school year and membership in TRS established by purchasing the service credit. The proposed changes also correct the reference to the former requirement that the member make the contributions on compensation received as a substitute in order to purchase the service credit and reflect the current requirement that the cost to establish the service credit is the actuarial cost.

The proposed changes to §25.6 reflect statutory changes adopted in HB 2974 that require membership to be established through employment with a single employer and clarify that once membership is established through one employer, any other employment is also eligible employment.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that proposed amended §§25.1, 25.4, and 25.6 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules. Any fiscal impact is a result of the enacted legislation.

For each year of the first five years that the proposed amended rules will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to provide guidance in administering the provisions concerning membership eligibility.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amended rules will be in effect, there is minimal to no economic cost to entities or persons required to comply with the proposed amended rules. Any economic cost to such entities or persons is a result of the enacted legislation. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposed amended rules, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments should be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under Government Code §825.102, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: Government Code §821.001(6), which defines "employee"; Government Code §822.001, which states the membership requirement; Government Code §823.002, which addresses service creditable in a year; and Government Code §825.403 which addresses collection of member contributions.

#### §25.1. Full-time Service.

(a) Employment of a person by a single TRS covered employer for one-half or more of the standard full-time work load at a rate comparable to the rate of compensation for other persons employed in similar positions is regular, full-time service eligible for membership.

(b) Any employee of a public state-supported educational institution in Texas shall be considered to meet the requirements of subsection (a) of this section if his or her customary employment with a single employer is for 20 hours or more for each week and for four and one-half months or more.

(c) Membership eligibility for positions requiring a varied work schedule is based on the average of the number of hours worked per week in a calendar month and the average number of hours worked must equal or exceed one-half of the hours required for a similar full-time position.

(d) For purposes of subsection (a) of this section, full-time service is employment that is usually 40 clock hours per week. If the TRS-covered employer has established a lesser requirement for full-time employment for specified positions that is not substantially less than 40 hours per week, full-time service includes employment in those positions. In no event may full-time employment require less than 30 hours per week.

(e) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) Except as provided in subsection (j) of this section regarding adjunct faculty, if there is no equivalent full-time position of a given position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) The requirement in this subsection applies to all positions, including bus drivers.

(f) For school years prior to the 2011-2012 school year:

(1) If there is no equivalent full-time position of a given non-certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 15.

(2) If there is no equivalent full-time position of a given certified position, the minimum number of hours required per week that will qualify the position for TRS membership is 20.

(3) Persons regularly employed as bus drivers for routes approved by the Transportation Department of the Texas Education Agency are eligible for membership. A person will be considered regularly employed as a bus driver if his or her customary employment requires driving at least one such route per day.

(g) For purposes of subsection (a) of this section, regular employment is employment that is expected to continue for four and one-half months or more. Employment with an institution of higher education (including community and junior colleges) is regular employment if it is expected to continue for more than one full semester or continues for more than one full semester in the same school year. Employment that is expected to continue for less than four and one-half months or for no more than one full semester in a school year is temporary employment and is not eligible for membership.

(h) For purposes of subsection (a) of this section, a rate of compensation is comparable to other persons employed in similar positions if the rate of compensation is within the range of pay established by the Board of Trustees for other similarly situated employees or is the customary rate of pay for persons employed by that employer in similar positions.

(i) For purposes of this section, employment in institutions of higher education (including community and junior colleges) as an instructor of classes taken by students for college credit or classes that are taken to prepare students for college level work, that are [is] measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing

class or instructional time must be converted to clock hours and counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's standard will be used to determine the number of clock hours scheduled for work. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course hour or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be considered for membership based on the number of clock hours worked.

(j) Beginning on the first day of the 2013-2014 school year, the minimum number of hours required per week that will qualify an adjunct faculty position for TRS membership is 20. Effective with the beginning of the 2015-2016 school year, the minimum number of hours per week that will qualify an adjunct faculty position as eligible for membership in TRS must be served with a single employer or must meet the requirements of §25.6 of this title (relating to Part-time or Temporary Employment). For purposes of this section, an adjunct faculty position is an instructor position that is filled on a semester-by-semester basis, compensated on a per class basis, and the duties include only those directly related to instruction of students in a class taken by students for college credit or taken to prepare students for college level work. If a person combines work as an adjunct faculty instructor and any other type of employment, the minimum number of hours worked per week that will qualify the person for membership is 20.

(k) A person employed by an open enrollment charter school authorized under Subchapter D, Chapter 12, Education Code, or the open enrollment charter holder is eligible for membership in TRS if the person is performing services on behalf of the Texas open enrollment charter school and the employment otherwise meets the requirements of this section. A person employed by a management company or other entity retained by the charter school or charter holder to provide management or other services on behalf of the open enrollment charter school is not eligible for membership in TRS.

(l) A person employed by a Texas public school district and performing services on behalf of a campus or program charter school authorized under Subchapter C, Chapter 12, Education Code, is eligible for membership in TRS if the employment otherwise meets the requirements of this section. An employee of an open enrollment charter holder that is contracted to provide services to a campus or program charter school is eligible for membership in TRS if the person is performing services on behalf of the campus or program charter school and the employment otherwise meets the requirements of this section. An employee of a management company or other entity retained to provide management or other services on behalf of the campus or program charter school is not eligible for membership in TRS.

(m) Beginning on September 1, 2015, if an employee is employed in two or more part-time positions with a single employer, the minimum number of hours the employee must work in all positions in order to establish eligibility for membership in TRS must equal or exceed one-half of the hours required for the full-time equivalent position requiring the greater number of hours per week.

#### §25.4. *Substitutes.*

(a) Persons who serve as substitutes in positions otherwise eligible for membership may qualify for membership provided that they serve for at least 90 days in one school year and purchase the service credit.

(b) For purposes of this title, a substitute is a person who serves on a temporary basis in the place of a current employee. A substitute may be paid no more than the daily rate of pay set by the employer.

(c) Membership may be established and credit received by verifying the number of days worked as a substitute and salary earned and paying the actuarial cost [making the] required [deposits] under §25.43 of this title (relating to Cost [Fee on Deposits] for Unreported Service or Compensation). Verification must be made in [en] a form prescribed by the retirement system.

(d) In no event shall verification of substitute service be accepted after a member has retired from the system and his or her first monthly annuity payment has been issued or after the effective date of a member's participation in the Deferred Retirement Option Plan (DROP).

(e) Required actuarial costs [deposits and fees] must be paid before any benefits based on the verified substitute service are paid by TRS on behalf of the member or before the verified service is used to determine eligibility for benefits. Members claiming credit for such service will be assessed a fee for delinquent deposits, if applicable, as provided in §25.43 of this title.

(f) Payment for substitute service required in subsection (e) of this section will be accepted and credit granted only as permissible under the Internal Revenue Code.

(g) Substitute service purchased as provided in this section shall be included in the school year in which it was rendered in counting the amount of service provided in order to receive a year of service credit under §25.131 of this title (relating to Required Service).

#### §25.6. *Part-time or Temporary Employment.*

(a) Part-time (employment that is less than one-half the standard work load), irregular, seasonal, or temporary employment (employment for a definite period of less than four and 1/2 months or, for employment with an institution of higher education, the employment is for no more than one semester in a school year) is eligible only if such employment, when combined with other employment in Texas public educational institutions during the same school year, qualifies as service eligible for membership or if such other employment in itself qualifies as service eligible for membership.

(b) Beginning with the 2015-2016 school year, part-time (employment that is less than one-half the standard work load), irregular, seasonal, or temporary employment (employment for a definite period of less than four and 1/2 months or, for employment with an institution of higher education, the employment is for no more than one semester in a school year) is eligible only if combined with other employment with the same employer so that the combined employment qualifies as service eligible for membership, or if other employment with the same or another TRS-covered employer in itself qualifies as service eligible for membership.

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 October 1, 2015.  
TRD-201504100

Brian K. Guthrie  
Executive Director  
Teacher Retirement System of Texas  
Earliest possible date of adoption: November 15, 2015  
For further information, please call: (512) 542-6438



## SUBCHAPTER B. COMPENSATION

### 34 TAC §25.26

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.26 concerning annual compensation creditable for benefit calculation in Chapter 25, Subchapter B of TRS' rules. Chapter 25 concerns membership credit, and Subchapter B addresses various types of compensation typically paid to public education employees, whether such compensation is creditable for TRS benefit calculation purposes, and the contributions that must be made to TRS on the compensation. Section 25.26 establishes how TRS will determine a member's annual compensation for benefit calculation purposes.

The proposed amendments to §25.26 address the authority provided to the board in HB 2974 (84th Legislature, 2015) to establish the 12 month period used in determining a member's annual compensation. The proposed amendments address the issues raised in public comments before the board regarding the reduced compensation used by TRS in determining the compensation in the final year of retirement due to the standard school year (September 1-August 31). The proposed amendments maintain the standard school year but provide an alternate method for determining the annual compensation in the year of retirement. The proposed amendments also clarify the amount of salary TRS will attribute to the 2014-2015 school year if a member loses a month of compensation due to the recent rule change that required employers to report compensation in the month that the compensation is paid rather than the month in which the compensation is earned.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that proposed amended §25.26 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to provide notice and guidance in administering the provisions concerning standardized school year, which determines annual compensation for benefit calculation purposes.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amended rule will be in effect, there is minimal to no economic cost to entities or persons required to comply with the proposed amended rule, and any economic costs to members will primarily be resulted from the enacted legislation. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposed amended rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an eco-

nomics impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments should be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

**Cross-Reference to Statute:** The proposed amendments affect Chapter 824, Subchapter C, of the Government Code, concerning service retirement benefits.

#### §25.26. Annual Compensation Creditable for Benefit Calculation.

(a) Except as provided in subsections [subsection] (b), (g) and (h) of this section, for the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, annual compensation means creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year for service rendered during no more than a 12-month period. [For the school year in which the member retires and except as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement shall be included in the annual compensation for that year. If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.]

(b) For the purpose of computing the amount of a retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths before April 1, 2015, annual compensation paid prior to September 1, 2012 is the greater of:

(1) the amount of creditable compensation for service paid to a member of the retirement system during a 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(2) the amount of creditable compensation paid to the member during a 12-month period beginning September 1 and ending August 31 of the next calendar year.

(c) Unless otherwise provided by law or this chapter, a member shall receive credit only for annual compensation actually received.

(d) Compensation from which deductions for an Optional Retirement Program annuity were made shall not be included in annual compensation for benefit calculation purposes.

(e) If as a result of the requirement in §25.28(c) of this title (relating to Payroll Report Dates) to report compensation in the month that it is paid rather than the month it is earned a member has only 11 months of salary credited by TRS in the 2014-2015 school year and that year of compensation would have been one of the years of compensation used in calculating the member's highest average salary for

benefit calculation purposes, TRS will attribute an additional month of salary in the 2014-2015 school year for purposes of benefit calculation. The amount that TRS will attribute for the additional month of salary is the amount of compensation that would have been reported for the missing month if the requirement in §25.28(c) of this title to report compensation in the month that it is paid was not in place and instead the employer reported the compensation earned in the missing month.

(f) For the purpose of computing the amount of retirement benefit or a death benefit under §824.402, Government Code, for retirements or deaths after March 31, 2015, annual compensation shall be calculated as follows:

(1) for the 2013-2014 school year and thereafter, annual compensation is the amount of creditable compensation for service paid to a member of the retirement system during a 12-month period beginning September 1 and ending August 31 of the next calendar year;

(2) for the 2012-2013 school year, annual compensation is the greater of:

(A) the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year); or

(B) the amount of creditable compensation paid to the member during a 12-month period beginning September 1, 2012 and ending August 31, 2013.

(3) for school years prior to the 2012-2013 school year annual compensation shall be the amount of creditable compensation for service paid to a member of the retirement system during the 12-month school year as defined in §25.133(a) of this title (relating to School Year).

(g) Effective with the 2015-2016 school year, annual compensation for the school year in which the member retires is the highest total of compensation received during a 12 consecutive month period that occurs during a 14 consecutive month period provided:

(1) the member completes the full contract period for the final year;

(2) the 14 consecutive month period includes the months of September through August of the school year in which the member retires;

(3) the 14 consecutive month period does not include months prior to the month in which the member's contract for the final year began;

(4) the annual compensation under this subsection does not include compensation earned after retirement, except that as provided in §25.24(e) of this title (relating to Performance Pay), creditable annual compensation earned by the date of retirement but not yet paid at the date of retirement is included in the annual compensation for that year;

(5) the annual compensation under this subsection does not include performance pay credited by TRS as annual compensation in a prior school year;

(6) the annual compensation for the school year in which the member retires is subject to all applicable Internal Revenue Code limits for that school year;

(7) the member does not receive credit for more than 12 months of compensation in the annual compensation for the final school year; and

(8) the member's compensation in the final year before retirement is not paid out in fewer than 12 months.

(h) If due to an error of the employer, compensation earned by the retiree in the final school year before retirement is not paid and/or not reported before the first annuity payment is issued, upon notice to TRS and the submission of all required corrected reports and member and employer contributions on the compensation, TRS shall adjust its records. If the additional compensation results in increased benefits payable on behalf of the retiree, the adjusted benefit shall be paid beginning in the month TRS receives the additional contributions and the corrected reports. In no event may an error be corrected under this subsection after the end of the school year following the school year in which the member retired.

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 October 1, 2015.

TRD-201504101

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## SUBCHAPTER C. UNREPORTED SERVICE OR COMPENSATION

### 34 TAC §25.46

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.46 concerning determination of compensation subject to deposit and credit in Chapter 25, Subchapter C of TRS' rules. Chapter 25 concerns membership credit, and Subchapter C establishes policies related to service or compensation a member's employer must report but did not. Section 25.46 concerns determination of compensation subject to deposit and credit.

The proposed changes to §25.46 clarify that corrections to compensation due to an underpayment by the employer in the prior school year(s) will be credited by TRS in the school year in which the corrective payment is made and member contributions must be made in a lump sum based on the current contribution rate.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that proposed amended §25.46 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule. Any fiscal impact is a result of the enacted legislation.

For each year of the first five years that the proposed amended rule will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to clarify the current rule concerning crediting compensation of a TRS member in the school year in which it is paid and distinguishing between unreported compensation and corrective payments.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amended rule will be in effect, there is minimal to no economic cost to entities or persons required to comply with the proposed amended rule. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposed amended rule, and therefore no local employment impact statement



is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments should be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

**Cross-Reference to Statute:** The proposed amendments affect §825.403 and §825.408 of the Government Code.

*§25.46. Determination of Compensation Subject to Deposit and Credit.*

(a) The amount of deposits due for unreported service rendered or compensation paid in the current school year or for unreported service rendered or compensation paid in the immediately preceding school year and corrected as provided in §25.28(g) of this title (relating to Payroll Report Dates) will be calculated at the member contribution rate in effect for the year in which the service was rendered or compensation was paid but for which no deposits or insufficient deposits were made. Contributions will be based on creditable compensation as determined under the laws and rules applicable at the time of the service.

(b) Beginning with the 2015-2016 school year, compensation paid to a member by an employer to correct an error of underpayment occurring in a prior school year or school years will be credited by TRS in the school year in which the compensation is paid. The amount of contributions owed on creditable compensation is determined under the laws and rules applicable at the time of the corrective payment and must be paid in a lump sum pursuant to Government Code, §825.409 from any compensation due to the employee.

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 October 1, 2015.

TRD-201504102

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## SUBCHAPTER F. VETERAN'S (USERRA) SERVICE CREDIT

### 34 TAC §25.74

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.74 in Chapter 25, Subchapter F of TRS' rules. Chapter 25 concerns membership credit, and Subchapter F establishes policies for an eligible member or retiree to

establish up to five years of eligible veteran's service credit in the retirement system or to establish compensation credit, in accordance with the requirements of the Uniformed Services Employment and Re-Employment Rights Act (USERRA), the federal law protecting veterans' benefits upon re-employment or application for re-employment following active military duty. Section 25.74 establishes the cost to purchase USERRA service and compensation credit.

TRS proposes adding new subsection (g) to §25.74 to address issues identified while developing requirements for the new TRS Enterprise Application Modernization (TEAM) system. Those issues concern the lack of authority of TRS to charge installment fees for the purchase of USERRA service or compensation credit and the required programming for the new system to charge installment fees for the purchase of other types of service or compensation credit but not for the purchase of USERRA service or compensation credit.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.74 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to provide updated notice and guidance in administering the purchase of USERRA service credit.

Mr. Guthrie and Mr. Welch have determined that for each year of the first five years that the proposed amended rule will be in effect, there is no economic cost to entities or persons required to comply with the proposed amended rule. Any economic costs result from statutory provisions of state law. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposed amended rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice and the proposed rule in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board, and §823.304 of the Government Code, which authorizes the Board to adopt rules to comply with the federal law relating to USERRA service credit.

**Cross-Reference to Statute:** The proposed amendments affect Chapter 823, Subchapter D, of the Government Code, which provides for the establishment of military service credit with TRS.

*§25.74. Cost.*

(a) To obtain service credit for active military duty under the Uniformed Services Employment and Re-Employment Rights

Act (USERRA) and §25.71 of this title (relating to Service Credit for Eligible Active Duty under the Uniformed Services Employment and Re-Employment Rights Act), the member must deposit with the retirement system for each school year of service claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, the Teacher Retirement System (TRS) will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(b) To obtain credit for member compensation for active military duty under the USERRA and §25.71 of this title, the member must deposit with the retirement system for each school year of salary credit claimed an amount equal to member contributions based on the following:

(1) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(2) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under the USERRA and §25.71 of this title. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, TRS will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position.

(c) Credit for member compensation may be established for any school year of active military duty eligible under the USERRA and §25.71 of this title, even if service credit has already been granted for the school year for service in the public schools of Texas.

(d) Establishment of compensation credit does not entitle a member to service credit for a school year unless no service credit has been granted for the school year through sufficient service in the public schools of Texas.

(e) A member is first eligible to establish credit under §25.71 of this title on the date of application for reemployment in a TRS covered position or on November 12, 1991, whichever is later.

(f) Service credit purchased under this section shall be purchased in the order in which the service was rendered, with the earliest years of military service being purchased first.

(g) The amount required to establish service credit under subsection (a) of this section and the amount required to establish compensation credit under subsection (b) of this section must be submitted in a lump sum equal to the cost to purchase at least one year of service or compensation credit and may not be submitted using the installment method of payment.

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 October 1, 2015.

TRD-201504103

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

### 34 TAC §25.85

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.85 in Chapter 25, Subchapter G of TRS' rules. Chapter 25 concerns membership credit, and Subchapter G establishes policies for eligible members to purchase up to 15 years of out-of-state service credit in the system. Section 25.85 concerns the amount of out-of-state service that can be purchased.

The proposed changes to §25.85 reflect statutory changes adopted in HB 2974 (84th Legislature, 2015) clarifying that the amount of out-of-state service credit that may be purchased is limited to 5 years if the member is eligible to receive a benefit from another retirement system for the same service.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.85 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to provide clarified guidance in administering the purchase of out-of-state service credit.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board to adopt rules for the administration of the funds of the system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect §823.401 of the Government Code, which concerns the purchase of out-of-state service.

§25.85. *Amount of Out-of-State Service Which Can Be Purchased.*

(a) Credit is limited to one year of out-of-state service for each year in Texas.

(b) No out-of-state service can be used to compute any benefit for any person with less than 5 years service in Texas.

(c) Not more than 15 years out-of-state service can be purchased in accordance with Government Code, §823.401, provided that if any of the years of out-of-state service is considered nonqualified service, no more than five years of nonqualified service credit can be purchased. For purposes of this section, nonqualified service means the member's out-of-state service is currently maintained in another public retirement system from which the member has a right to receive a distribution, including a refund of contributions. [and any purchase is subject to applicable plan qualification requirements, including applicable plan limitations on member contributions.]

(d) Any purchase is subject to applicable plan qualification requirements, including applicable plan limitations on member contributions.

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 October 1, 2015.

TRD-201504104

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## SUBCHAPTER I. VERIFICATION OF SERVICE OR COMPENSATION

### 34 TAC §25.121

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.121 in Chapter 25, Subchapter I of TRS' rules. Chapter 25 concerns membership credit, and Subchapter I addresses how service or compensation may be verified by a member, either because it was originally unreported or because it was timely reported but more information is needed to determine whether it is creditable. Section 25.121 concerns employer verification of service or compensation.

The proposed changes to §25.121 address a change identified during the development of the new TRS Enterprise Application Modernization (TEAM) system that will allow reporting entities to electronically certify and verify certain matters via the TRS Reporting Entity Portal instead of requiring them to use a paper form.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.121 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Brian Guthrie, Executive Director, have determined that the public benefit will be to clarify the application of rules concerning employer certification and verification of service or compensation.

Mr. Welch and Mr. Guthrie have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

Cross-Reference to Statute: The proposed amendments affect §825.403 of the Government Code, concerning collection of member's contributions, including the responsibilities of reporting entities.

§25.121. *Employer Verification.*

Verification of service or compensation that was not reported to TRS or that was reported but requires further documentation in order to be creditable must be made by the employer in [on] a form prescribed by TRS. At the request of TRS, employers shall provide copies of any records or information regarding service or compensation, including but not limited to contracts, work agreements, salary schedules or addenda, board minutes, payroll records, employment records, or other materials that will assist TRS in making a determination. TRS may rely upon employer verifications of service or compensation or may conduct an investigation to determine whether verified service or compensation is eligible.

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 October 1, 2015.

TRD-201504105

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## SUBCHAPTER J. CREDITABLE TIME AND SCHOOL YEAR

### 34 TAC §25.131, §25.133

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.131, concerning required service, and §25.133, concerning school year in Chapter 25, Subchapter J of TRS' rules. Chapter 25 concerns membership credit, and Subchapter J establishes the amount of time a member must serve in a TRS-eligible position in order to receive a year of service credit. Section 25.131 provides that a member must serve at least 90 days or receive paid leave for at least 90 days in order to receive a year of service credit. Section 25.133 establishes a standard school year.

The proposed changes to §25.131 address issues identified in developing requirements for the TRS Enterprise Application Modernization (TEAM) system regarding the alternate method of establishing service credit for members who are regularly scheduled to work less than five days per week. Members who are regularly scheduled to work less than five days per week may earn service credit by working 4 1/2 months rather than 90 days. The four and one-half month period must include four full calendar months in which the member works or receives paid leave for at least eight days and an additional five days of service rendered in another month or months.

The proposed changes to §25.133 reference the changes in §25.26 regarding how TRS will determine annual compensation in the school year in which the member retires.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.131 and §25.133 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify rules concerning how a creditable year of service is earned and how TRS will determine annual compensation in the school year in which the member retires.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under §823.002 of the Government Code, which authorizes the board to determine by rule the amount of service equivalent to a year of service credit, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

**Cross-Reference to Statute:** The proposed amendments affect Chapter 824, Subchapter C, of the Government Code, concerning service retirement benefits.

*§25.131. Required Service.*

(a) Beginning on the first day of the 2011-2012 school year and thereafter:

(1) Except as provided in paragraph (3) of this subsection, a member must work in a TRS eligible position and be paid or receive paid leave from a TRS eligible position at least 90 days during the school year to receive a year of service credit.

(2) A substitute as defined in §25.4 of this title (relating to Substitutes) will be qualified for membership and granted a full year of service credit by working 90 or more days as a substitute in a school year, receiving pay for that work, and verifying the work as provided in §25.121 of this title (relating to Employer Verification) and paying the actuarial cost [deposits and fees] for the work as provided in §25.43 of this title (relating to Cost [Fee on Deposits] for Unreported Service or Compensation).

(3) In the last school year of service before retirement, a member serving in an eligible position who worked and was paid for that work or received paid leave for less than 90 days in the school year but worked and was paid for that work or received paid leave for a full fall semester in accordance with the employer's calendar will receive a year of service credit. If the employer's calendar does not provide for semesters, a member must work and be paid for work in an eligible position or receive paid leave from an eligible position for at least 90 days in order to receive a year of service credit for the school year before retirement.

(4) Days that the employer is scheduled to be closed for business are not included in the 90 days of work required to receive a year of service credit unless the day(s) are paid holidays by the employer or the employee was charged with paid leave during the closing. Holidays that are not included in the required number of work days for an employee are not counted as paid holidays or days of paid leave.

(b) For school years prior to the 2011-2012 school year:

(1) Except as provided in paragraph (2), (3), or (4) of this subsection, a member must serve at least 4 1/2 months in an eligible position during the school year to receive credit for a year of service.

(2) A member who served less than four and one-half months in a school year but served a full semester of more than four calendar months will receive credit for a year of service.

(3) A substitute as defined in §25.4 of this title will be qualified for membership and granted a full year of service credit by rendering 90 or more days of service as a substitute in a school year and verifying the service as provided in §25.121 of this title and paying deposits and fees for the service as provided in §25.43 of this title.

(4) An employee who enters into an employment contract or oral or written work agreement for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in §25.4 of this title will receive credit for a year of service credit.

(c) Beginning on the first day of the 2015-2016 school year and thereafter, in lieu of the requirements in subsection (a) of this section, a member who is serving in a membership eligible position and who is regularly scheduled to work fewer than 5 days per week, may establish a year of service credit by working and receiving pay for that work or using paid leave, for four and one-half months. The four and one-half month period must include four full calendar months in which the member renders service and is paid or the member uses paid leave, for

at least 8 days and an additional five days of service rendered and for which the member is paid or paid leave used in another calendar month or months but not to include [that precede and/or follow] the four full calendar months.

(d) Except as provided in subsection (a) of this section, for service credit granted in the school year in which the member retires, in no event may a member receive a year of service credit earlier than December 31.

§25.133. *School Year.*

(a) For the purpose of granting creditable time toward retirement and determining a member's annual compensation, for school years prior to the 2012-2013 school year a "school year" shall be one of the following:

(1) a period extending from the beginning of the school term (but not earlier than August 23) through August 31 of the following calendar year for service rendered prior to the 1970-1971 school year;

(2) a period extending from the beginning of the school term (but not earlier than August 2) through August 31 of the following calendar year for service rendered for the 1970-1971 school year and thereafter; or

(3) a period not to include more than 12 months, extending from the beginning date of a "qualified contract" or an oral or written work agreement year through August 31 of the following calendar year or to the beginning date of a subsequent qualified contract or oral or written work agreement year, whichever is earlier. Use of this "qualified contract year" is optional for school years 1970-1971 through 1974-1975 but shall be mandatory for all persons under a qualified contract after the 1974-1975 school year. Use of a written or oral work agreement that is not a qualified contract is optional for school years 1970-1971 through 1994-1995, but shall be mandatory for all persons employed under a written or oral work agreement after the 1994-1995 school year. A "qualified contract" or "work agreement" is any employment agreement in which service each year under the agreement is to begin on or after July 1 and is to extend past August 31 of the same calendar year. A "qualified contract" further imposes upon the employing school district a legal obligation to employ and compensate the employee for the entire duration of the agreed employment period.

(b) Except as provided in §25.26(g) of this title (relating to Annual Compensation Creditable for Benefit Calculation) regarding determining a member's annual compensation in the year of retirement, for [FøF] the purpose of granting creditable time toward retirement and determining a member's annual compensation, beginning with the 2012-2013 school year and thereafter a "school year" shall be a 12 month period beginning September 1 and ending August 31 of the next calendar year.

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 October 1, 2015.

TRD-201504106

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## SUBCHAPTER N. INSTALLMENT PAYMENTS

### 34 TAC §25.181, §25.182

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.181, concerning minimum monthly payment to establish special service credit, and §25.182, concerning yearly increments of credit in Chapter 25, Subchapter N of TRS' rules. Chapter 25 concerns membership credit, and Subchapter N establishes policies for payment of special service credit through a monthly installment plan of up to 60 months or the number of years being purchased, whichever is less.

The proposed amendments to §25.181 and §25.182 address issues identified in TEAM while developing requirements for the new system regarding the lack of authority of TRS to charge installment fees for the purchase of USERRA service credit and the required programming for the new system to charge installment fees for the purchase of other types of service credit but not for the purchase of USERRA service credit.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §25.181 and §25.182 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Brian Guthrie, TRS Executive Director, has determined that the public benefit will be to provide notice and guidance in administering the provisions of SB 1668 concerning service credit purchase cost.

Mr. Guthrie and Mr. Welch have determined that, for each year of the first five years that the proposed amended rule will be in effect, there is no economic cost to entities or persons required to comply with the proposed amended rule. Mr. Welch and Mr. Guthrie have determined that there will be no effect on a local economy because of the proposed amended rule, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Welch and Mr. Guthrie have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments should be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by the Executive Director at the designated address no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under the following sections of the Government Code: §825.102 which authorizes the board to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board and §825.410 which authorizes the board to adopt rules to implement that statute concerning payroll deductions or installment payments for special service credit.

Cross-Reference to Statute: The proposed amendments relate to the following sections of the Government Code: §823.301 and §823.302, concerning military service credit; §823.304, concerning reemployed veteran's credit under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. §4301 et seq.).

§25.181. *Minimum Monthly Payment.*

Installment payments to establish special service credit, except USERRA service credit which may not be purchased using installment payments, including payments by cash, check, or similar methods, payments by bank draft, or payments by payroll deduction shall be no less than \$25 per month.

§25.182. *Yearly Increments of Credit.*

(a) For out-of-state service credit, military service credit, work experience service credit purchased under Government Code §823.404, USERRA service credit, developmental leave service credit, and unreported service credit, a member may choose to purchase fewer years of service credit than the total years of service credit which the member is eligible to purchase. The years of credit shall be purchased and credited in the order in which they appear on the TRS bill for the purchase.

(b) For military service and[.] work experience service credit purchased under Government Code §823.404, [~~and USERRA service,~~] the member must complete payment for the number of years of credit that the member has chosen to purchase before purchasing additional years of the same kind of service credit by either lump sum payment or by additional installment payments. A member purchasing USERRA service credit must purchase the service credit by paying the cost of the additional year(s) in a lump sum payment and may not purchase the service credit using the installment payment method. Until August 31, 2013, a member purchasing out-of-state service credit, developmental leave service credit, or unreported service credit under an installment purchase agreement may enter into a second installment purchase agreement for the same type of service credit or may pay the lump sum cost of the additional service credit before completing the purchase of the same type of service credit under the initial installment purchase agreement.

(c) A member must purchase all withdrawn service credit and may not choose to purchase this type of service credit in yearly increments. A member will not receive any credit for withdrawn service until the entire balance due and all fees have been paid.

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 October 1, 2015.

TRD-201504108

Brian K. Guthrie  
Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## CHAPTER 27. TERMINATION OF MEMBERSHIP AND REFUNDS

### 34 TAC §27.6

The Teacher Retirement System of Texas (TRS) proposes amendments to §27.6 in Chapter 27 of TRS' rules. Chapter 27 concerns termination of membership and refunds, and §27.6 concerns reinstatement of an account.

The proposed amendments to §27.6 clarify that service credit terminated by an election to participate in the Optional Retirement Program (ORP) may not be reinstated for the purpose of

establishing eligibility for benefits under the Proportionate Retirement Program except by terminating all employment with institutions of higher education and returning to employment with a public school employer as described in 34 TAC §25.172(a), concerning ORP and TRS.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §27.6 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify the rules on reinstating service credit forfeited by participating in an ORP.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under §825.102 of the Government Code, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

**Cross-Reference to Statute:** The proposed amendments affect Texas Chapter 822, Subchapter A of the Government Code, concerning TRS membership, §803.201 of the Government Code concerning retirement eligibility based on combined service credit and §823.501 of the Government Code, concerning credit canceled by membership termination.

#### §27.6. *Reinstatement of an Account.*

(a) Except as provided in subsection (e) of this section, any [Any] member who has withdrawn an account resulting in the cancellation of service credit may reinstate this account and receive credit for the canceled service by meeting the following requirements:

(1) resume membership service in the retirement system or establish eligibility under Government Code, Chapter 803 or 805;

(2) redeposit the amount withdrawn for the years during which the membership was terminated;

(3) except as provided by subsections (b) and (c) of this section, pay a reinstatement fee of 8 percent compounded annually in whole year increments from August 31st of the plan year in which the withdrawal occurred to the date of redeposit;

(4) reinstate all withdrawn accounts which resulted in the cancellation of service credit. A withdrawn account representing less than a creditable year of service must be reinstated only when it is necessary to combine the canceled service in the account with all other

canceled service or with other eligible membership service or equivalent membership service performed in the same year to constitute a creditable year of service.

(b) A member may establish withdrawn service credit by paying the deposits and fees required in subsection (c) of this section if:

(1) the member otherwise meets all eligibility requirements under §823.501, Government Code, as amended;

(2) all of the service for which credit is sought to be established was rendered before September 1, 2011, and TRS received an application to withdraw the credit on or before August 31, 2011; and

(3) the member makes payment for the withdrawn service credit, or enters into an installment agreement for payment, not later than August 31, 2013.

(c) To reinstate withdrawn service credit under subsection (b) of this section, the member shall redeposit the amount withdrawn for the years during which the membership was terminated and shall pay a reinstatement fee of 6 percent compounded annually in whole year increments from August 31 of the plan year in which the withdrawal occurred to the date of redeposit.

(d) Membership service credit and the accumulated contributions associated with the membership terminated by not qualifying for service credit for five consecutive years as provided in §822.003(a)(4), Government Code, may be restored by TRS when the person returns to TRS covered employment provided the accumulated contributions in the member account have not been withdrawn. If the accumulated contributions have been withdrawn, the member may reinstate the withdrawn account as provided in this section.

(e) A person who terminated membership in TRS by electing participation in the Optional Retirement Program (ORP) may not reinstate the years of terminated service credit in TRS for the purpose of establishing eligibility for retirement benefits under the Proportionate Retirement Program except as provided in §25.172(a) of this title (relating to ORP and TRS).

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 October 1, 2015.

TRD-201504109

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## CHAPTER 29. BENEFITS

### SUBCHAPTER A. RETIREMENT

#### 34 TAC §29.13

The Teacher Retirement System of Texas (TRS) proposes amendments to §29.13 in Chapter 29, Subchapter A of TRS' rules. Chapter 29 concerns benefits, and Subchapter A concerns service and disability retirement and other benefits. Section 29.13 concerns changing a beneficiary for survivor benefits.

The proposed amendments to §29.13 make changes needed to comply with the law as clarified by the Supreme Court of the

United States in the recent decision in *Obergefell v. Hodges*, 576 U.S. \_\_\_\_, 135 S. Ct. 2584 (2015) regarding same-sex marriages. The proposed changes will allow a retiree receiving a standard annuity who was not permitted to designate a same-sex spouse as the beneficiary of an optional retirement annuity at retirement because of the Internal Revenue Code restriction on the adjusted minimum age difference between the retiree and the beneficiary or who married a same-sex spouse after retirement but before the ruling in *Obergefell*, a two-year window of opportunity to change the standard annuity to an optional annuity and name the spouse as beneficiary. TRS also proposes changing the title of the rule to reflect the opportunity to change retirement plans.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §29.13 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to establish practices and provide notice and guidance for retirees and TRS staff about changing from a standard annuity to an optional retirement annuity after designating a same-sex spouse as the beneficiary.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under the §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the Board.

Cross-Reference to Statute: The proposed amendments affect Chapter 824, Subchapters B, C, and D of the Government Code, concerning beneficiaries, service retirement benefits, and disability retirement benefits.

§29.13. Changing Beneficiary for Survivor Benefits and Changing Retirement Plans.

(a) A retiree may change the designation of beneficiary for survivor benefits at any time.

(b) A retiree who retired before June 26, 2015 and is receiving a standard service or disability retirement annuity under Government Code, §824.203 or §824.304(b), who was not permitted to name a same-sex spouse as the beneficiary of an optional annuity at retirement because of the Internal Revenue Code restriction on adjusted minimum age difference between the retiree and the beneficiary, or who married

after retirement but before June 26, 2015 and was not permitted to name the retiree's same-sex spouse as the beneficiary of an optional annuity under Government Code, §824.1011, may no later than December 31, 2017 replace the standard annuity under §824.1011 and select an optional annuity under Government Code, §824.204(c)(1), (c)(2), or (c)(5), or under Government Code, §824.308(c)(1), (c)(2), or (c)(5), on a form prescribed by TRS and designate the retiree's spouse as the beneficiary as if the retiree had married after retirement. The selection of the optional annuity and the designation of the beneficiary of the optional annuity do not take effect until the first annuity payment that becomes due two years after the date the selection and designation are received by TRS.

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 October 2, 2015.

TRD-201504111

Brian K. Guthrie  
Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## SUBCHAPTER B. DEATH BEFORE RETIREMENT

### 34 TAC §29.33

The Teacher Retirement System of Texas (TRS) proposes amendments to §29.33 in Chapter 29, Subchapter B of TRS' rules. Chapter 29 concerns benefits, and Subchapter B establishes policies relating to member death and survivor benefits when a TRS member dies before service or disability retirement. Section 29.33 concerns absence from service.

The proposed amendment to §29.33 addresses an issue that may arise as a result of statutory changes adopted in HB 2974 (84th Legislature, 2015) that precludes termination of membership if the member is employed with a TRS-covered employer but in a position that is less than one-half time and is therefore in a position that is not eligible for membership. The TRS plan terms have not specifically addressed what is meant by absence from service for purposes of establishing eligibility for active member death benefits. The proposed change to §29.33 clarifies what absence from service means regarding the death benefits payable by TRS. The proposed change also thereby clarifies that a member who is employed less than half time by a TRS-covered employer is not absent from service, and the beneficiary of such a member may be eligible to receive death benefits upon the death of the member.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendment to §29.33 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify what it means to be absent from service for the purpose of establishing eligibility for active-member death benefits.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendment is proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board.

**Cross-Reference to Statute:** The proposed amendment to §29.33 affects §824.403 of the Government Code.

§29.33. *Absence from Service.*

(a) If a member is absent from service at the time of death and the absence does not meet the description in §824.403 of the Government Code, the beneficiary is eligible to receive only the accumulated deposits of the member. For this purpose, absence from service begins September 1 following the last eligible reported membership service.

(b) Eligibility for receipt of death benefits authorized by Government Code §824.402 shall be determined by TRS staff.

(c) For purposes of this section, absent from service means that the member was not an employee of a TRS-covered employer during the school year in which the member died.

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 October 2, 2015.

TRD-201504112

Brian K. Guthrie  
Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

### SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

#### 34 TAC §31.14

The Teacher Retirement System of Texas (TRS) proposes amendments to §31.14 in Chapter 31, Subchapter B of TRS' rules. Chapter 31 concerns employment after service or disability retirement, and Subchapter B concerns employment



after service retirement. Section 31.14 concerns one-half time employment.

The proposed amendments to §31.14 clarify how to determine the number of hours worked by a service retiree employed by an institution of higher education (including community and junior colleges) as an instructor of classes that are taken to prepare the student for college level work but are not taken for college credit as the current rule describes.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §31.14 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify rules concerning the administration of the one-half time exception for service retirees.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

**Cross-Reference to Statute:** The proposed amendments affect Chapter 824, Subchapter G, of the Government Code, concerning loss of benefits on resumption of service.

#### §31.14. *One-half Time Employment.*

(a) A person who is receiving a service retirement annuity who retired after January 1, 2011 may be employed on as much as a one-half time basis without forfeiting annuity payments for the months of employment. In this section, one-half time basis means the equivalent of four clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule.

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(c) Paid time-off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(d) For the purpose of this section, actual course or lab instruction with an institution of higher education (including community and junior colleges) in classes taken by students for college credit or classes that are taken to prepare students for college level work, and that are [is] expressed in terms of number of courses; course or semester hours/credits; instructional units; or other units of time representing class or instructional time shall be counted as a minimum of two clock hours for each clock hour of instruction or time in the classroom or lab in order to reflect instructional time as well as preparation, grading, and other time typically associated with one hour of instruction. If the employer has established a greater amount of preparation time for each hour in the classroom or lab, the employer's established standard will be used to determine the number of courses or labs a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit, must be counted based on the number of clock hours worked.

(e) This exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis. Beginning September 1, 2011 and thereafter, the exception for one-half time employment under this section and the exception for substitute service under §31.13 of this title (relating to Substitute Service) may be used during the same calendar month without forfeiting the annuity only if the total number of days that the retiree works in those positions in that month does not exceed one-half the number of days available for that month for work. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(f) A person working under the exception described in this section is not separated from service with all Texas public educational institutions for the purpose of the required 12 full consecutive month break described in §31.15 of this title (relating to Full-time Employment after 12 Consecutive Month Break in Service).

(g) The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

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 October 2, 2015.

TRD-201504113

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## SUBCHAPTER C. EMPLOYMENT AFTER DISABILITY RETIREMENT

### 34 TAC §31.32, §31.34

The Teacher Retirement System of Texas (TRS) proposes amendments to §31.32 and §31.34 in Chapter 31, Subchapter C of TRS' rules. Chapter 31 concerns employment after service or disability retirement, and Subchapter C concerns employment after disability retirement. Section 31.32 concerns half-time employment up to 90 days and §31.34 concerns employment up to three months on a one-time only trial basis.

The proposed amendments to §31.32 clarify how to determine the number of hours worked by a disability retiree employed by an institution of higher education (including community and junior colleges) as an instructor of classes that are taken to prepare the student for college level work but are not taken for college credit as the current rule describes.

The proposed amendments to §31.34 clarify an issue identified while developing requirements for the new TRS Enterprise Application Modernization (TEAM) system regarding the opportunity for a disability retiree to work full-time on a three-month trial basis for each period of disability.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §31.32 and §31.34 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to clarify rules concerning employment after disability retirement and the requirements for the new TEAM system regarding the opportunity to work full-time on a three-month trial basis.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendments are proposed under §824.601(f) of the Government Code, which authorizes TRS to adopt rules necessary for administering Chapter 824, Subchapter G, of the Government Code concerning loss of benefits on resumption of service, and §825.102 of the Government Code, which authorizes the board to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

**Cross-Reference to Statute:** The proposed amendments affect Chapter 824, Subchapter G, of the Government Code.

#### §31.32. *Half-time Employment Up to 90 Days.*

(a) Any person receiving a disability retirement annuity may, without affecting payment of the annuity, be employed for a period not to exceed 90 days during any school year by a public educational institution covered by TRS on as much as a one-half time basis. In this section, one-half time basis means the equivalent of four clock hours for each work day in that calendar month. The total number of hours allowed for that month may be worked in any arrangement or schedule; working any part of a day counts as one day towards the 90 day annual limit established in this section. This exception does not apply for the first month after the retiree's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(b) Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(c) Total substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) and half-time employment may not exceed 90 days during any school year. Substitute service under §31.33 of this title (relating to Substitute Service Up to 90 Days) and half-time employment may be combined in the same calendar month only if the total number of days that the disability retiree works in those positions in that month does not exceed one-half the number of days available that month for work. Working any part of a day as a substitute or half-time counts as working one day. If the calendar month has an odd number of work days available for work, the retiree is limited to working only the number of whole days available and may not work any amount of additional time in the one-half day remaining when dividing the total number of work days in the month by 2 without forfeiting the annuity for that month.

(d) Paid time off, including sick leave, vacation leave, administrative leave, and compensatory time for overtime worked, is employment for purposes of this section and must be included in determining the total amount of time worked in a calendar month and reported to TRS as employment for the calendar month in which it is taken.

(e) For the purpose of this section, actual course instruction in state-supported colleges (including junior colleges), and universities of classes taken by students for college credit or classes that are taken to prepare students for college level work, and that are [is] measured in course or semester hours shall be counted as a minimum of two clock hours per one course or semester hour in order to reflect instructional time as well as preparation and other time typically associated with one course hour of instruction. If the employer has established a greater amount of preparation time for each course or semester hour, the employer's established standard will be used to determine the number of course or semester hours a retiree may teach under the exception to loss of annuity provided by this section. The equivalent clock hours computed under this subsection may not be greater than the number of work

hours authorized in subsection (a) of this section. Employment as an instructor of an on-line class taken by students for college credit that is measured or expressed in terms of the number of courses; semester or course hours/credits; instructional units; or other units of time representing class or instructional time must be counted as a minimum of two clock hours for each course or semester hour. Employment as an instructor of continuing education, adult education, and/or classes offered to employers or businesses for employee training, that is not measured or expressed in terms of the number of courses; semester or course hours/credits; or instructional units or other units of time rather than clock hours and for which the students/participants do not receive college credit must be counted based on the number of clock hours worked.

*§31.34. Employment Up to Three Months on a One-Time Only Trial Basis.*

(a) Any person receiving a disability retirement annuity may, without forfeiting payment of the annuity, be employed on a one-time only trial basis on as much as full time for a period of no more than three consecutive months if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) The work must occur:

(1) in a period, designated by the employee, of no more than three consecutive months; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31.

(c) TRS must receive written notice of the retiree's election to take advantage of the exception described by this section. The notice must be made on a form prescribed by TRS and filed with TRS prior to the end of the three month trial period.

(d) Working any portion of a month counts as working a full month for purposes of this section.

(e) The three month exception permitted under this section is in addition to the 90 days of work allowed in §31.33 of this chapter (relating to Substitute Service up to 90 Days) or §31.32 of this chapter (relating to Half-time Employment Up to 90 Days) for a disability retiree.

(f) The trial work period may occur in one school year or may occur in more than one school year provided the total amount of time in the trial period does not exceed three months and the months are consecutive.

(g) A disability retiree may elect to work on a one-time only trial basis for as much as full time for a period of no more than three consecutive months for each period of disability retirement subject to the requirements of this section.

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

Filed with the Office of the Secretary of State on October 2, 2015.  
TRD-201504114

Brian K. Guthrie  
Executive Director  
Teacher Retirement System of Texas  
Earliest possible date of adoption: November 15, 2015  
For further information, please call: (512) 542-6438

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**CHAPTER 43. CONTESTED CASES**

**34 TAC §43.16, §43.46**

The Teacher Retirement System of Texas (TRS) proposes amendments to §43.16 and §43.46 in Chapter 43 of TRS' rules. Chapter 43 addresses procedures for appeals of administrative decisions and contested cases relating to the TRS pension plan. Section 43.16 concerns notice of hearing and other action and §43.46 concerns rehearings.

The proposed amendments to §43.16 reflect statutory changes adopted in SB 1267 (84th Legislature, 2015) that address changes to notice requirements and the deadlines for providing a more definite and detailed statement of the factual matters at issue in contested case hearings. The statutory changes require TRS to include a short, plain statement of the "factual matters" at issue within seven days of the date set for the hearing.

The proposed amendments to §43.46 reflect statutory changes adopted in SB 1267 that address statutory changes to deadlines to submit, respond, and take action on motions for rehearing in contested cases.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendments to §43.16 and §43.46 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rules.

For each year of the first five years that the proposed amended rules will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to conform TRS' procedural rules concerning administrative appeals and contested cases with recently enacted legislation related to them.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rules. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rules; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendments are proposed under §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board, §825.115(b) of the Government Code, which authorizes the board to adopt rules concerning the adop-

tion of final decisions in contested cases, and §2001.004 of the Government Code, which requires the board to adopt rules practice stating the nature and requirements of all available formal and informal procedures, including those for contested cases.

Cross-Reference to Statute: The proposed amendments affect the following statutes: §825.115(a)-(c) of the Government Code, which concerns the applicability of Chapter 2001 of the Government Code to TRS; Chapter 2001, Subchapter F of the Government Code, which concerns final decisions and orders and rehearings in contested cases; and §2003.050 of the Government Code, which concerns the applicability of a referring agency's rules to a matter referred to the State Office of Administrative Hearings.

§43.16. *Notice of Hearing and Other Action.*

(a) Notices of hearing, proposals for decision, and all other rulings, orders, and actions by SOAH, TRS, or an administrative law judge, as applicable, shall be served upon all parties or their attorneys of record in person or at their last known address by mail. Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid if it is received by TRS within a timely manner under Texas Rule of Civil Procedure 5 and the sender provides adequate proof of the mailing date. Service may also be accomplished by electronic mail or facsimile transmission if all parties agree. In that case, the sender shall retain the original of the document and file it upon request with the administrative law judge or the executive director, as applicable. Upon request, the sender has the burden of proving the date and time of receipt of the document served by facsimile transmission or electronic mail. Electronic mail may not be used with documents produced pursuant to a discovery request. On motion by any party or on its own motion, TRS may serve notice of a hearing on any person whose interest in the subject matter will be directly affected by the final decision in the case.

(b) All initial hearing notices shall include the following:

- (1) a statement of time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved;
- (4) a short, plain statement of the factual matters asserted. If TRS or a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than ten days before the date set for hearing, a more definite and detailed statement must be furnished not less than seven [~~three~~] days prior to the date set for the hearing; and

(5) a statement that failure to appear at the prehearing conference or any scheduled hearing may result in the following: the facts alleged by TRS may be admitted as true; the relief requested by TRS may be granted; petitioner's appeal may be denied; or petitioner's appeal may be dismissed with prejudice for failure to prosecute the claim; or any or all of the foregoing actions.

(c) After service of the initial notice, any party wishing to raise issues or matters not set forth in the initial notice must do so by filing a motion which sets forth such issues or matters not less than 30 days before the date set for hearing. If the motion is granted, the administrative law judge shall give notice, not less than 20 days before the date of hearing, of the additional issues and matters to be decided in the contested case.

(d) All other notices in a contested case shall set forth only the additional issues and matters to be decided.

§43.46. *Rehearings.*

(a) A decision of the executive director is the final decision of TRS when, under applicable law or rule, the decision is not subject to appeal to the board and when the circumstances described in Government Code, §2001.144, are met.

(b) A decision by the board of trustees in a contested case is the final decision of TRS when the circumstances described in Government Code, §2001.144, are met.

(c) A party adversely affected by a decision that may be the final decision of TRS may file a motion for rehearing with TRS, not later than the 25th [~~20th~~] day after the date on which the [party or party's attorney of record is notified of the] decision or order that is the subject of the motion is signed, unless the time for filing the motion has been extended under Government Code §2001.142, by an agreement under Government Code §2001.147, or by written order of the executive director under subsection (g) of this section [~~may become final under Government Code, §2001.144~~]. A party or attorney of record notified by mail is presumed to have been notified on the third day after the date on which the notice is mailed. Any motion for rehearing shall be directed to the attention of the executive director and served on all parties]. A timely motion for rehearing is a prerequisite to an appeal in a contested case under Government Code, §2001.145, if an appeal is otherwise permitted by law.

(d) A reply to the motion for rehearing must be filed with TRS not later than the 40th [~~30th~~] day after the date on which the [party or party's attorney of record is notified of the] decision or order that is the subject of the motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an agreement under Government Code §2001.147 or by a written order of the executive director under subsection (g) of this section [~~that may become final under Government Code, §2001.144~~].

(e) The board of trustees, or the executive director if the motion for rehearing concerns a decision of the executive director that may not be appealed to the board, shall act on a motion for rehearing not later than the 55th [~~45th~~] day after the date on which the [party or party's attorney of record is notified of the] decision or order that is the subject of the motion is signed [~~may become final~~]. If the motion is not acted on within the time specified, the motion is overruled by operation of law.

(f) The board of trustees may rule on a motion for rehearing in the manner provided for in Government Code, §2001.146. A subsequent motion for rehearing is not required after the board of trustees rules on a motion for rehearing unless a motion is required under Government Code §2001.146(h).

(g) The executive director may by written order extend the time for filing a motion or reply or for TRS to take action on a motion for rehearing, in accordance with Government Code, §2001.146.

(h) A motion for rehearing under this section must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

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 October 2, 2015.

TRD-201504115  
Brian K. Guthrie  
Executive Director  
Teacher Retirement System of Texas  
Earliest possible date of adoption: November 15, 2015  
For further information, please call: (512) 542-6438



## CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

### 34 TAC §47.6

The Teacher Retirement System of Texas (TRS) proposes an amendment to §47.6 in Chapter 47 of TRS' rules. Chapter 47 concerns qualified domestic relations orders (QDROs). Section 47.6 concerns the finality of a determination that an order is not a QDRO.

The proposed amendment to §47.6 reflects statutory changes adopted in SB 1267 (84th Legislature, 2015) and conforms the TRS rule regarding the number of days a petitioner has to file a motion for reconsideration on a determination that a domestic relations order is not a qualified order with the statutory timeline for filing a motion for rehearing on a contested case matter.

Ken Welch, TRS Deputy Director, estimates that, for each year of the first five years that the proposed amendment to §47.6 will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed amended rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to conform the timeline in §47.6 for filing a motion for reconsideration with recently enacted legislation amending the timeline in the analogous administrative procedure regarding the filing of a motion for rehearing.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

Statutory Authority: The amendment to §47.6 is proposed under §804.003 and §804.005 of the Government Code, which authorize TRS to adopt rules relating to QDROs, and §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of business of the board.

Cross-Reference to Statute: The proposed amendment to §47.6 affects §804.003 of the Government Code, which sets out the requirements for QDROs.

### §47.6. Determination That An Order Is Not Qualified Is Final.

A determination by the executive director or the executive director's designee that an order is not a QDRO is a final decision by TRS. No appeal to the board of trustees of TRS is authorized. However, a party adversely affected by a determination of the executive director or the designee must file a motion for reconsideration with the executive director no later than 25 [20] days after the date such determination is rendered if the party wishes to contest the determination.

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 October 2, 2015.

TRD-201504116  
Brian K. Guthrie  
Executive Director  
Teacher Retirement System of Texas  
Earliest possible date of adoption: November 15, 2015  
For further information, please call: (512) 542-6438



## CHAPTER 49. COLLECTION OF DELINQUENT OBLIGATIONS

### 34 TAC §49.3

The Teacher Retirement System of Texas (TRS) proposes an amendment to §49.3 in Chapter 49 of TRS' rules. Chapter 49 concerns collection of delinquent obligations. Section 49.3 concerns referrals of delinquent obligations to the attorney general for collection.

The proposed amendments to §49.3 address rule changes made by the attorney general regarding the referral of delinquent obligations to the attorney general for collection. Specifically, the proposed amendment reflects changes adopted by the attorney general regarding the timeline for referring a delinquent obligation to the attorney general for collection and conform the TRS rule regarding the number of days to refer a matter to the attorney general with the timeline set by the attorney general.

Ken Welch, TRS Deputy Director, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed rule.

For each year of the first five years that the proposed amended rule will be in effect, Mr. Welch and Mr. Brian Guthrie, TRS Executive Director, have determined that the public benefit will be to conform TRS' timeline for referring a delinquent obligation to the attorney general with the attorney general's own amended timeline for such referrals.

Mr. Guthrie and Mr. Welch have determined that there is no economic cost to entities or persons required to comply with the proposed amended rule. Mr. Guthrie and Mr. Welch have determined that there will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Mr. Guthrie and Mr. Welch have also determined that there will be

no direct adverse economic effect on small businesses or micro-businesses within TRS' regulatory authority as a result of the proposed amended rule; therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Brian Guthrie, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

**Statutory Authority:** The amendment to §49.3 is proposed under the Government Code, §825.102 of the Government Code, which authorizes the TRS Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of the business of the board, and §2107.002 of the Government Code, which requires TRS to adopt rules for collection of delinquent obligations.

**Cross-Reference to Statute:** The proposed amended rule affects §2107.002(a) of the Government Code, which concerns the referral of uncollected and delinquent obligations to the attorney general.

*§49.3. Referrals of Delinquent Obligations to Attorney General for Collection.*

(a) If a department determines that a delinquent obligation may be collectible or if TRS procedures otherwise require, the department shall refer the obligation to the Legal Services Department for recommendation of whether TRS should refer the obligation to the attorney general for collection.

(b) The executive director or his designee shall decide whether to refer a matter to the attorney general for collection. This decision and any referral to the attorney general should be made no later than 90 [120] days after the determination that an obligation owed to TRS is delinquent.

(c) Except as noted in this chapter, TRS will not refer for collection delinquent obligations in which the amount to be recovered would be less than the total sum of expense to TRS and the attorney general for travel, employee time, court costs, and other relevant expenses.

(d) The executive director or his designee may for policy reasons, actuarial reasons, or other good cause refer a delinquent obligation to the attorney general for collection even if the size of the obligation or other considerations generally would cause TRS not to refer the obligation.

(e) In making a determination of whether to refer a delinquent obligation to the attorney general, the executive director or his designee shall consider:

- (1) expense of further collection procedures;
- (2) the size of the delinquent obligation;
- (3) the existence of any security;
- (4) the possibility of collection or satisfaction of the delinquent obligation through other means;
- (5) the likelihood of collection; and
- (6) any other relevant factors established by TRS collections procedures.

(f) When referring a delinquent obligation to the attorney general, TRS shall provide:

- (1) the obligor's verified address and telephone number;

- (2) a statement that the obligation is not uncollectible;

- (3) proof of no more than two demand letters to the obligor at the obligor's verified address; and

- (4) other relevant information relating to the delinquent obligations and TRS's collection efforts.

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 October 2, 2015.

TRD-201504117

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (512) 542-6438



## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 67. HEARINGS ON DISPUTED CLAIMS

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 67, concerning Hearings on Disputed Claims, by amending §§67.1, 67.3, 67.5, 67.7, 67.9, 67.13, 67.15, 67.21, 67.27, 67.37, 67.39, 67.43, 67.55, 67.61, 67.65, 67.71, 67.73, 67.74, 67.77, 67.83, 67.87, 67.89, 67.91, 67.93, 67.101 and 67.103, concerning Purpose and Scope; Definitions; Appeals; Filing and Service of Documents and Pleadings; Computation of Time; Conduct and Decorum; Classification of Parties; Intervention; Form and Content of Pleadings; Docketing and Numbering of Cases; Notice and Service; Dismissal without Hearing; Order of Procedure; Offer of Proof; The Record; Official Notice; Documentary Evidence; Telephonic Proceedings; Introduction of Exhibits; Filing of Exceptions and Replies; Submission of Appeals to the Board's Designee; Presentation of Contested Cases to the Board or its Designee; Form, Content, and Service of Orders; Administrative Finality; Ex Parte Communications; and Subpoenas; proposes the repeal of §§67.17, 67.95 and 67.97 concerning Parties Defined, Effective Date of Order and Rehearing; and proposes new rule §67.201, concerning Procedures Governing Bid Protests.

Section 67.1, concerning Purpose and Scope, is proposed to be amended to clarify the scope of coverage for Chapter 67.

Section 67.3, concerning Definitions, is proposed to be amended to incorporate statutory definitions, to provide more clarity to existing definitions and to eliminate redundant, unnecessary and undefined terms. Inclusion of a definition for good cause assures that the standard in matters addressed in Chapter 67 is the same as provided in ERS' statutes. Section 67.3 is also amended to incorporate and consolidate the definitions from §67.17 in order to facilitate ease of reference with respect to the defined terms. As a result, ERS proposes to repeal §67.17 as unnecessary and redundant. Section 67.15 is also proposed to be amended to incorporate the revised definitions for consistency in the use of the existing terms.

Section 67.5, concerning Appeals, is proposed to be amended to require that an appellant sign and file a release authorizing the admission of relevant confidential information. The amendment clarifies that an executed release is required to proceed with an appeal because applicable law may otherwise limit use of such confidential information that is necessary to properly and efficiently adjudicate an appeal. Failure to provide the release in a timely manner may be grounds to dismiss the appeal unless there was good cause for delay. The proposed amendment will ensure that relevant evidence may be used and offered by the parties, subject to procedures intended to protect the reasonable privacy interests of the appellants. Accordingly, §67.89, concerning Presentation of Contested Cases to the Board or its Designee, is proposed to be amended to remove the additional release authorization requirement for proceedings affected by the Federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) (HIPAA) since it is now addressed in §67.5. The proposed amendment also allows an appeal that has been filed after the deadline to be accepted on a showing of good cause, and clarifies the requirements for standing consistent with §815.511, Texas Government Code and §1551.356, Texas Insurance Code. Section 67.73, concerning Documentary Evidence, is also proposed to be amended to include "sensitive data" as defined by Texas Rules of Civil Procedure 21c(a) to the list of confidential information that may be placed under seal by order and access limited to the parties, their representatives and the examiner.

Section 67.7 and §67.27, concerning Filing and Service of Documents and Pleadings and Form and Content of Pleadings, are proposed to be amended to include email as a proper method of service consistent with the service procedures currently provided by Texas Rules of Civil Procedure 21a, and to clarify that pleadings should include a party's facsimile number and email address to facilitate better, more efficient and less expensive communications between parties.

Section 67.9, concerning Computation of Time, is proposed to be amended to clarify the grounds for extending deadlines where there is agreement of the Parties, a timely motion is filed prior to the deadline at issue, and good cause for an extension after the deadline has passed.

Section 67.21, concerning Intervention, is proposed to be amended to include ERS Administering Firms and Insurers as interested parties who may request to intervene in a proceeding. The change reflects current practice in which Administering Firms and Insurers are not included as appellees as a matter of course, and they may choose not to be named with ERS as co-appellees in ERS contested case proceedings unless otherwise required by ERS. In the past, ERS' Administering Firms chose to be included in such cases as a matter of course.

Section 67.37, concerning Docketing and Numbering of Causes, is proposed to be amended to clarify that ERS appeals must be authorized by statute.

Section 67.43, concerning Dismissal without Hearing, is proposed to be amended to clarify the times in a Proceeding during which the Executive Director and the Examiner may properly rule on a motion to dismiss. The proposed amendment also clarifies that an appeal may be dismissed if an Appellant fails to comply with ERS' request for a release under §67.5(a).

Sections 67.13, 67.39, 67.61, 67.71, 67.74, 67.83 and 67.101, concerning Conduct and Decorum, Notice and Service, Offer of Proof, Official Notice, Telephonic Proceedings, Filing of Excep-

tions and Replies and Ex Parte Communications, are proposed to be amended to clarify and update the rules, to correct minor typographical errors and to remove unnecessary or redundant language. Chapter 67 is also proposed to be amended throughout to reflect references to both male and female genders as appropriate.

Section 67.55, concerning Order of Procedure, is proposed to be amended to include a provision permitting a party to record non-privileged discussions during the hearing without need to request leave from the Examiner. Additionally, §§67.55, 67.65 and 67.77 are proposed to be amended to clarify that a party may conduct discovery, cross-examination and offer rebuttal evidence in connection with evidence admitted at the request of an adverse party after the conclusion of the hearing of the contested case matter in order to ensure that Parties have a full opportunity for a complete and impartial Proceeding.

Section 67.87, concerning Submission of Appeals to the Board's Designee, is proposed to be amended to replace the word "shall" with the word "may" when referring to proceedings to be decided upon submission to the Board's designee. The proposed change reflects that in some cases, depending on the facts and circumstances, it may be appropriate for a case to be decided more or less than 60 days from the receipt of the record.

Section 67.91 and §67.93, concerning Form, Content and Service of Orders and Administrative Finality, are proposed to be amended to reference the superseding provisions of the amendments to the Administrative Procedure Act (APA) (see Acts of the 84th Leg., Reg. Session 2015; SB 1267) (SB 1267) regarding how ERS may notify parties to a contested case of any decision or order and procedures and deadlines governing motions for rehearing. Section 67.93 is also proposed to be amended to reflect the repeal of §67.97.

Section 67.95 and §67.97, concerning Effective Date of Order and Rehearing, are proposed to be repealed since they are inconsistent with SB 1267 and redundant. The proposed amendments to §67.91 and §67.93 and the proposed repeal of §67.95 and §67.97 cross-referencing the procedural changes in SB 1267 provide additional protections and benefits to Appellants with respect to notification of ERS orders and deadlines to file motions for rehearing.

New §67.201, concerning Procedures Governing Bid Protests, is proposed to be added to codify ERS' bid protest procedures available to a vendor aggrieved by the solicitation, evaluation or award of a contract by ERS, and to provide in certain instances that a bond may be required to pursue a protest if ERS is utilizing professional actuarial services in connection with any recommendation to award a contract to a vendor. Posting of bond in these instances is in the best interest of ERS' trust funds and is necessary to limit or prevent the filing of protests that are frivolous, filed in bad faith, for the purposes of delay of the bid and award process or for other reasons not supported by applicable law and facts.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state government or local government as a result of enforcing or administering the rules. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed unless a person filing a bid protest is required to post bond and forfeits same upon losing the protest, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be adoption of procedures that conform to recently enacted legislation, an increase in the efficiency of the administrative appeal and bid protest processes, and also a reduction in the cost and funds associated with the contested case hearing and administrative appeal process.

Comments on the proposed rule amendments, new rule, and repeals may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, November 16, 2015, at 10:00 a.m.

**34 TAC §§67.1, 67.3, 67.5, 67.7, 67.9, 67.13, 67.15, 67.21, 67.27, 67.37, 67.39, 67.43, 67.55, 67.61, 67.65, 67.71, 67.73, 67.74, 67.77, 67.83, 67.87, 67.89, 67.91, 67.93, 67.101, 67.103, 67.201**

The amendments and new rule are proposed under Texas Government Code §815.102(a)(4), which provides authorization for the ERS Board of Trustees to adopt rules for hearings on contested cases or disputed claims.

No other statutes are affected by the proposed amendments or new rule.

#### §67.1. Purpose and Scope.

(a) Purpose of chapter. The purpose of this chapter is to provide an orderly and efficient system of procedure before the Board of Trustees ("Board") of the Employees Retirement System of Texas ("ERS"), the Board's designee or ERS staff [or its designee] to facilitate the administration of the laws of the state within its jurisdiction. This chapter shall be given a fair and impartial construction to attain these objectives.

(b) Scope of chapter. This chapter shall exclusively govern the procedure for all Proceedings before the Board, its designee or ERS where notice and hearing are required or as otherwise provided herein. In accordance with §815.102(b), Government Code, this chapter supercedes and replaces all rules of procedure promulgated by the State Office of Administrative Hearings ("SOAH") in Proceedings originating with ERS. This chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Board, its designee, ERS or the substantive rights of any person. Nor shall this chapter have the effect of waiving the sovereign (governmental) or official immunity of ERS, its trustees, officers, employees, agents, Administering Firms and Insurers.

(c) Texas Rules of Civil Procedure. Proceedings under this chapter shall be conducted in accordance with the Texas Rules of Civil Procedure (including future amendments thereto), except where such rules conflict with a provision of this chapter or the Texas Administrative Procedure Act (Government Code §§2001.001 et seq.) ("APA"), in which event the provision of this chapter or the APA shall control.

#### §67.3. Definitions.

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

(1) Administering Firm--Any firm designated by the Board to administer any coverages, services, claims, benefits, or requirements in accordance with Chapter 1551, Insurance Code and the rules of the Board. The Administering Firm may be considered a Party to any Proceeding in connection with such matters.

(2) [(4)] Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the Legislature, the courts, or any publicly funded institution of higher education) which makes rules or determines contested cases.

(3) Appellant--Any Person with standing to pursue an administrative appeal under this chapter who, by written Pleading, including a notice of appeal, applies for or seeks an available administrative remedy from the Board or its designee.

(4) Appellee--ERS and any other Party properly joined in a contested case matter against whom the appeal is taken.

(5) [(2)] Authorized Representative--An attorney or other person legally authorized to represent a Party pursuant to §67.23 of this chapter (relating to representative appearances).

(6) [(3)] Board--The Board of Trustees of the Employees Retirement System of Texas.

(7) [(4)] Examiner (hearings examiner)--Any person appointed by the Executive Director to conduct hearings. This term also includes an Administrative Law Judge ("ALJ") appointed by SOAH to preside at the hearing of a contested case when the Executive Director requests that SOAH conduct hearings.

(8) [(5)] Executive Director--The Executive Director of the Employees Retirement System of Texas or his/her [her] designee.

(9) Good Cause--Good Cause means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause.

(10) Insurer--Any insurance carrier who has contracted with ERS to provide coverages authorized by the Texas Employees Group Benefits Act, Chapter 1551, Insurance Code. The Insurer shall be considered a Party to any Proceeding which involves a question of eligibility or coverage under its contract with ERS.

(11) Intervenor--A Party other than an Appellant who is permitted to become a Party to a Proceeding in accordance with §67.21 of this chapter (relating to Intervention).

[(6)] Insured--A Person who is or claims to be eligible to participate in the Texas Employees Group Benefits Program established by the Texas Employees Group Benefits Act, Texas Insurance Code, Chapter 1551-]

(12) [(7)] Member--A Person who is a member, retiree, or beneficiary of any retirement system or program administered by the Board.

(13) [(8)] Order--The whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the Executive Director, Board or its designee in a matter other than rulemaking.

(14) Participant--An eligible individual who participates in the group benefits program pursuant to Chapter 1551 of the Texas Insurance Code.

(15) [(9)] Party--Each Appellant, Appellee, Administering Firm, Insurer, Intervenor [Person] or Agency with standing who is named or admitted as a party of record in a Proceeding. [This term also includes the definition set forth in §67.17 of this chapter (relating to parties defined)-]



(16) [(10)] Person--Any natural person, partnership, company, corporation, association, governmental subdivision, or public or private organization of any character other than an Agency.

(17) [(11)] Pleading--A written concise statement by a Party of the issues on appeal arising from the Party's respective claims or defenses in connection with a Proceeding. Pleadings may take the form of applications, petitions, notices of appeals and requests for hearing, complaints, briefs, exceptions, replies, motions, notices, or answers.

(18) [(12)] Proceeding--Any hearing, investigation, inquiry, determination or other fact-finding or decision-making procedure, including, but not limited to a contested case under §2001.003(1) of the APA.

(19) [(13)] Trustee--One of the duly elected or appointed members of the Board.

#### §67.5. Appeals.

(a) When the Executive Director denies a claim, or takes other action for which an appeal is allowed by law, the Participant or Member will be informed that he/she [Claimant] has 30 days from the date the determination letter is served on the Participant or Member [Claimant] to file a written notice of appeal as specified in §67.7 of this chapter (relating to filing and service of documents and Pleadings). The determination letter will inform the Participant or Member [Claimant] of this right, as appropriate. In order to facilitate a thorough and just adjudication of the appeal, the Participant or Member shall, upon request, sign and file with ERS a release authorizing the use and admission into evidence in the appeal of relevant information, which may also include confidential information and sensitive data. Mandatory venue for an administrative hearing of the appeal will be in Austin, Texas.

(b) The Executive Director shall decide whether or not a notice of appeal is timely filed under this chapter. ERS will only accept late appeals based on a showing of good cause by the Participant or Member. Failure of the Appellant to execute and file with ERS a proper release under subsection (a) of this section within 30 days after filing a Notice of Appeal may be grounds for ERS to dismiss the appeal as untimely. The Executive Director's decision in these matters constitutes final Agency action on the issue and no administrative appeal from the Executive Director's decision is available.

(c) Standing. Unless otherwise provided by law, standing to pursue an administrative appeal under this chapter is limited to Members, Participants [Insureds], Insurers, Appellants, Appellees [respondents, appellants, Claimants], Administering Firms, beneficiaries of a deceased Member or Participant [Insured], and Persons or Agencies permitted to intervene pursuant to §67.21 of this chapter (relating to intervention). Healthcare providers under the Texas Employees Group Benefits Act, ERS vendors (other than Insurers and Administering Firms) and other third parties not specifically designated herein as having standing do not have standing to appeal ERS decisions.

(d) In accordance with §815.511(d), Government Code and §1551.360, Insurance Code, the Board delegates its authority to determine all Proceedings within its jurisdiction to the Executive Director. In his/her [her] discretion, the Executive Director may request the Board to decide a particular Proceeding when appropriate.

(e) The Executive Director may delegate, either generally, or in a particular Proceeding, the duties of the Executive Director under this chapter to another Person who is employed by ERS.

#### §67.7. Filing and Service of Documents and Pleadings.

(a) Except as otherwise provided in these rules, documents and Pleadings relating to any Proceeding pending or to be instituted before

ERS, the Board or its designee shall be filed with and/or served upon the Executive Director.

(b) Unless otherwise provided by applicable law or rule, in any Proceeding referred by the Executive Director to an Examiner to conduct a hearing, all Parties shall file documents and Pleadings initially with the Examiner. After the Examiner issues a final proposal for decision, including any responses to exceptions to the proposal for decision and replies to exceptions filed by the Parties, the Examiner no longer has jurisdiction over the Proceedings, and the Parties are then required to file all documents and Pleadings with the Executive Director. Thereafter, all Pleadings in the Proceeding shall be addressed to the Executive Director.

(c) Copies of any documents or Pleadings filed with or served upon the Executive Director or Examiner shall be served upon all other Parties to the Proceeding or their Authorized Representative contemporaneously with such filing or service.

(d) Unless otherwise stated, all documents and Pleadings required to be served on any Party may be served by any of the following methods:

- (1) hand-delivery;
- (2) certified or registered mail to the Party's or the Party's Authorized Representative's last known address;
- (3) facsimile to the Party's or the Party's Authorized Representative's current facsimile number; [øf]
- (4) electronic mail ("email") to the Party's or the Party's Authorized Representative's current email address; or
- (5) [(4)] any other manner as the Executive Director or Examiner, in their discretion, may reasonably require.

(e) Service by mail shall be complete when the Pleading or document is properly addressed, postage paid and deposited in a postal box. Service by facsimile or email is complete when the Pleading or document is transmitted to the recipient's current facsimile number or email address. Service by facsimile or email after 5:00 p.m. (recipient's time) shall be considered completed service on the following date. Notwithstanding the foregoing, whenever any portion of a Pleading or document may be considered or ruled upon at a hearing, then the Party or Authorized Representative serving same shall, not less than three (3) business days prior to any hearing, take all reasonable steps to notify, by telephone, email or facsimile, all other Parties to the Proceeding as to the nature of the Pleading or document filed and the relief requested therein.

(f) The Party or Authorized Representative filing or serving any documents or Pleadings shall, by his signature, certify to the Examiner or the Executive Director the Party's compliance with these rules regarding service. The failure of any Party or Authorized Representative to comply with the rules regarding service of documents and Pleadings may be grounds for the entry of an Order striking the Pleading or document from the record or the imposition of other appropriate sanctions as specified in §67.108 of this chapter (relating to discovery sanctions).

(g) Documents and Pleadings are considered to be filed with the Executive Director or Examiner when they are received by the Executive Director or Examiner or when they are served properly, whichever is earlier.

#### §67.9. Computation of Time.

(a) Counting days. In computing any period of time prescribed or allowed by this chapter, by Order of the Executive Director, Examiner, ERS, the Board or its designee, or by any applicable rules or

statutes, the period shall begin on the day after the act, event, mailing, transmission or default in question and it shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday (including federal and state holidays), in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any of the documents or Pleadings mentioned in §67.7 of this chapter (relating to filing and service of documents and Pleadings) may be extended by agreement of the Parties or, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that the extension will not prejudice the other Parties. A motion for extension may be filed after the deadline for filing the pleading if [there is agreement pursuant to §67.11 of this chapter (relating to agreements to be in writing) among all affected Parties, or] there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the Party making the motion.

(1) In the case of filings which initiate a Proceeding, which are made before an Examiner has been assigned the matter, or are made after all Proceedings pending before the Examiner have concluded, the Executive Director will determine whether or not good cause exists and whether or not an extension should be granted. The Executive Director's decision constitutes final Agency action on the issue and no administrative appeal from the Executive Director's decision is available.

(2) In the case of filings made in a Proceeding after an Examiner has been assigned the matter, and prior to the time the Proceedings before the Examiner have concluded and the Examiner no longer has jurisdiction, the Examiner will determine whether or not good cause exists and whether or not an extension should be granted.

#### §67.13. *Conduct and Decorum.*

(a) Comportment. Every Party, witness, and Authorized Representative shall comport himself in all Proceedings, depositions, conferences, meetings and hearings with dignity, courtesy, and respect for the Board, its designee, the Executive Director, Examiners, and all other Parties, their Authorized Representatives, and proceeding participants. Authorized Representatives shall observe and practice the ethical behavior prescribed for attorneys by the "Texas Lawyers Creed" and the "Texas Disciplinary Rules of Professional Conduct"; provided, however, that any Authorized Representative who is not licensed to practice law in the state of Texas shall not, by these rules, engage in the unauthorized practice of law as set forth in Government Code Chapter 81, Subchapter G [(~~Vernon~~ 2005)].

(b) Compliance. Upon violation of subsection (a) of this section, any Party, witness, or Authorized Representative may be excluded by the Board, its designee, or the Examiner from any hearing for such period and upon such conditions as are just, or may be subject to such other just, reasonable, and lawful disciplinary action as the Board, its designee, or the Examiner may prescribe. Any disciplinary action taken by the Examiner shall be subject to review by the Board or its designee. The Examiner is not authorized by these rules to assess monetary sanctions, attorney's fees, or costs upon any Party or witness, and any provisions of the Texas Rules of Civil Procedure relating to the award of monetary sanctions, attorney's fees, or costs do not provide such authority to the Examiner.

#### §67.15. *Classification of Parties.*

Parties to Proceedings governed by this chapter are classified as ERS, Appellants, Appellees, Agencies [~~appellants, respondents, Claimants, Insureds~~], Insurers, Administering Firms or Intervenors.

#### §67.21. *Intervention.*

(a) Any Person, Administering Firm, Insurer or Agency with standing and who is interested in intervening in any Proceeding before the Board or its designee may request to appear formally in the Proceeding, by filing a motion to intervene with the Executive Director at least thirty (30) days in advance of the hearing or submission date.

(b) Any Person, Administering Firm, Insurer or Agency with standing and who is interested in intervening in any Proceeding pending before an Examiner may file a motion to intervene with the Examiner at least thirty (30) days in advance of the hearing date.

(c) All motions to intervene shall include any relevant, material, and proper testimony and evidence bearing upon the issues involved in the particular Proceeding, reasons why such intervention is proper, and in what ways the movant has an economic, proprietary, or other substantial justiciable interest in the Proceeding. The motion must be supported by a showing of standing and good cause to intervene.

(d) The Executive Director or Examiner, subject to timely review by the Board or its designee, may determine whether or not intervention should be permitted.

#### §67.27. *Form and Content of Pleadings.*

(a) Typewritten or printed. Pleadings shall be typewritten or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin at least one inch wide and attached exhibits shall be folded to the same size. Unless printed, the impression shall be on one side of the paper only and shall be double spaced, except that footnotes and quotations in excess of a few lines may be single spaced. Reproductions may be by any process, provided all copies are true and correct, clear and permanently legible.

(b) Content. Pleadings shall state their object, shall contain a concise statement of the supporting facts, and shall be signed by the Party or his Authorized Representative.

(c) Signature and address. The original of every Pleading shall be signed in ink by the Party filing it or by his Authorized Representative. Pleadings shall contain the address, [and] phone number, facsimile number and email address of the Party filing the document or the name, business address, and telephone and facsimile numbers of the Authorized Representative.

(d) Form for Pleadings. All Pleadings shall contain the following:

(1) the name of the Party supporting or opposing the action of the Executive Director, Examiner, the Board or its designee;

(2) a concise statement of the facts relied upon by the pleader;

(3) a citation of the authority supporting the relief requested;

(4) a prayer stating the type of relief, action, or Order desired by the pleader;

(5) any other matter required by statute or applicable rule; and

(6) a certificate of service or other notation showing that a copy of the Pleading has been served on all other Parties to the Proceeding or their Authorized Representatives in accordance with §67.7 of this chapter (relating to filing and service of documents and Pleadings).

(e) Waiver. The Executive Director, Examiner, the Board or its designee, if applicable, may waive any requirement of this section if it is determined that application of the requirement to a Party would

create an unnecessary hardship and that not requiring the Party to comply with the section will not adversely affect the rights of any other Party.

*§67.37. Docketing and Numbering of Causes.*

When an appeal, application, or other Pleading which is intended to institute a hearing before the Board or its designee is received, ~~and~~ it complies with these rules as to form and content, and is determined to be a matter subject to appeal under statutes administered by ERS, then it shall be referred to an Examiner to conduct the hearing, shall be docketed as a pending Proceeding, and notice shall be served.

*§67.39. Notice and Service.*

(a) In a Proceeding, the Executive Director shall give Initial Notice of hearing and the issues to be determined therein ("Initial Notice"). The Initial Notice shall be given not less than twenty (20) days prior to hearing. In stating the issues and matters asserted in the Initial Notice, the Executive Director shall state verbatim the issues and matters set forth in the letter from the Executive Director to the Examiner referring the case for hearing.

(b) After service of the Initial Notice, any Party or his Authorized Representative wishing to raise issues or matters not set forth in the Initial Notice must do so by filing a motion setting forth such adopted issues or matters not less than thirty (30) days before the date set for hearing. The motion must be based on facts and legal authorities supporting the inclusion of additional issues. Responses to the motion may be filed and served within fourteen (14) days from the date the motion is served. If granted, the Examiner shall give notice, not less than seven (7) days before the date of hearing, of the additional issues and matters to be decided in the Proceeding. ~~[of Initial Notice and Amendments.]~~

*§67.43. Dismissal without Hearing.*

(a) Motions for dismissal without a hearing may be filed and ruled upon by the Executive Director, when the matter is pending before ERS, or by the Examiner, when the matter is pending before the Examiner, for any of the following reasons:

- (1) failure to prosecute a claim;
- (2) unnecessary duplication of Proceedings or res judicata;
- (3) withdrawal or voluntary dismissal of appeal;
- (4) moot questions or obsolete petitions;
- (5) following a Member's request for a refund of his retirement account, or other matters establishing a lack of jurisdiction;
- (6) upon agreement of the Parties pursuant to §67.11 of this chapter (relating to agreements to be in writing);
- (7) failure to execute a release pursuant to §67.5(a) of this chapter (relating to appeals);
- (8) ~~[(7)]~~ failure to appear at any hearing for which notice has been served; or
- (9) ~~[(8)]~~ assertion of a baseless appeal as provided by Rule 91a of the Texas Rules of Civil Procedure with respect to the procedures for dismissal of a baseless cause of action.

(b) The Examiner shall, and the Board, its designee, or the Executive Director may, dismiss the appeal of any Person who has filed written notice of the appeal but who defaults by:

- (1) failing to personally appear at any hearing if the Appellant is not represented by an Authorized Representative unless such appearance is waived by agreement of all the Parties pursuant to §67.11 of this chapter;

(2) failing to personally appear at any hearing if the Appellant is represented by an Authorized Representative unless the Appellant gives written notice at least ten (10) days prior to the date of the hearing that the Appellant will not personally appear or unless such appearance is waived by agreement of all Parties pursuant to §67.11 of this chapter; or

(3) failing to request a hearing or to take some other action specified by the Examiner or Executive Director within thirty (30) days after notice is mailed of intention to dismiss the claim.

(c) The Board, its designee, or the Executive Director may dismiss an appeal for any of the reasons described in subsection (a) of this section. A dismissal of an appeal by the Board, its designee, or the Executive Director constitutes final Agency action on the appeal and no administrative appeal from the decision is available.

(d) All dismissals by an Examiner under this section are mandatory and shall be unconditional. Upon a timely motion to reinstate and a showing of good cause, the Executive Director may, in his/her ~~[her]~~ sole discretion, thereafter permit reinstatement of an appeal dismissed for failure to prosecute a claim. A motion to reinstate may not be filed later than thirty (30) days from the date the Order of dismissal is served. An Order denying a motion to reinstate constitutes final Agency action and no administrative appeal from the decision is available.

*§67.55. Order of Procedure.*

(a) The Examiner shall open the hearing and make a concise statement of its scope and purposes. Once the hearing has begun, the Parties or their Authorized Representatives may be off the record only when the Examiner permits. A Party may, without requesting leave from the Examiner, record any non-privileged off the record discussions during the hearing. If a discussion off the record is pertinent, the Examiner may summarize such discussion for the record. Appearances are to be entered on the record by all Parties, their Authorized Representatives, and any Persons who may testify during the Proceedings. All Persons present who may testify will then be placed under oath. Thereafter, Parties may make motions or opening statements.

(b) Burden of Proof. The Party seeking relief is the Party with the burden of proof on all issues throughout the Proceedings, including issues in the nature of an affirmative defense.

(c) Following opening statements, if any, by both sides, the Party with the burden of proof may be directed to proceed with his direct case. Questions from the Examiner shall be limited to matters of clarification only, and such questions shall not be used to assist Parties with the burden of proof in meeting their burden or as a substitute for cross-examination.

(d) Invocation of "The Rule." Upon the motion of any Party to the Proceeding, nonparty witnesses shall be excluded during the testimony phase of the Proceeding as provided in Tex. R. Civ. P. 267(a) - (d). A witness or Party's failure to comply with the Examiner's Order granting such motion may be subject to an appropriate sanction as provided in §67.13 of this chapter (relating to conduct and decorum).

(e) Where the Proceeding is initiated at the Executive Director's or the Board's or its designee's own call, or where several Proceedings are heard on a consolidated record, the Examiner shall designate who shall open and close and at what stage intervenors shall be permitted to offer evidence.

(f) Opportunity for cross-examination and presentation of direct and rebuttal evidence shall be afforded all Parties. After all Parties have completed the presentation of their evidence, and been afforded the opportunity to ask clarifying questions and to cross-examine ad-

verse witnesses, closing arguments may be allowed. The Party with the burden of proof shall be entitled to open and close.

(g) On a proper motion and showing of good cause that evidence was not reasonably known or knowable to the movant, or was not provided in response to a proper discovery request, the Examiner may also call upon any Party to provide further relevant and material evidence upon any issue in the Proceeding before the issuance of a proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for discovery, inspection, cross-examination, and rebuttal by the other Parties.

*§67.61. Offer of Proof.*

(a) Formal exceptions to rulings of the Examiner during a hearing shall be unnecessary, but if made, they should be in accord with §67.69 of this chapter (relating to rules of evidence). It shall be sufficient that the Party, at the time any ruling is made or sought, makes known to the Examiner the action which he desires.

(b) When testimony is excluded by ruling of the Examiner, the Party offering the evidence shall be permitted to make an offer of proof by dictating into the hearing tape recording or other media or submitting in writing the substance of the adopted testimony, prior to the conclusion of the hearing, and that offer of proof shall be sufficient to preserve the point for review by the Board or its designee. Examiners may ask such clarifying questions of the witness as allowed in §67.55(b) of this chapter (relating to order of procedure) as necessary to establish that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof. [-]

*§67.65. The Record.*

(a) Contents of record. The record in a Proceeding shall consist of all matters identified in APA §2001.060, including the following:

- (1) all Pleadings, intermediate rulings, and documents reflecting Board policy;
- (2) evidence admitted;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on objections;
- (5) adopted findings, exceptions, replies to exceptions, and supporting briefs;
- (6) any proposal for decision, opinion, or report by the Examiner presiding at the hearing;
- (7) all staff memoranda or data submitted to the Examiner in connection with his consideration of the case.

(b) Closing the record.

(1) Upon the conclusion of the hearing, the Examiner shall close the record subject to receipt of any information requested by the Examiner pursuant to §67.55(e) of this chapter (relating to order of procedure) and receipt of any late exhibits as described in §67.77 of this chapter (relating to introduction of exhibits).

(2) Evidence of any kind other than that described in subsection (a) of this section, not made a part of the record prior to closing, shall be accepted by the Examiner or the Executive Director and considered by the Examiner or the Executive Director for inclusion in the record only upon a showing of relevance, materiality and good cause as to why the evidence could not reasonably have been presented at the hearing. Such additional evidence shall not be admitted without providing the Parties not offering the evidence the opportunity to conduct discovery, cross-examination and to offer rebuttal evidence. The pro-

posal for decision shall not be presented to the Board or its designee until the Examiner or the Executive Director has made a ruling on such evidence.

(c) Findings of fact. Findings of fact shall be based exclusively on the evidence and on matters officially noted.

*§67.71. Official Notice.*

Official notice may be taken of judicially cognizable facts, and such notice may be taken of generally recognized facts within the area of the specialized knowledge of ERS. Parties shall be notified of the material noticed, including any ERS [Board] decisions, staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge, or both, of ERS and its staff may be utilized in evaluating the evidence.

*§67.73. Documentary Evidence.*

(a) Documentary evidence may be received in the form of copies or excerpts, upon a showing that the original is not readily available. On request, however, Parties shall be given an opportunity to compare the copy with the original.

(b) When a large number of similar documents are offered, the Examiner may limit those admitted to a number which are typical and representative, and may, in his discretion, require a summarization of the relevant data from the documents and the presentation of the summary in the form of an exhibit; however, before making this requirement, the Examiner shall see that all Parties of record or their Authorized Representatives are given a reasonable opportunity to examine the documents from which the summaries are made.

(c) Documents containing confidential medical or psychiatric records or health information or sensitive data as defined by Texas Rules of Civil Procedure 21c(a) may, upon proper and timely motion, be placed under seal and access limited to the Parties, the Examiner, the Executive Director, his/her [her] staff and the Board or its designee in accordance with applicable law. In Proceedings involving allegations of misrepresentation, improper failure to disclose or other misconduct by the Appellant, the interests of the plans and programs administered by the Board shall be considered in ruling on a motion to seal records, and the Examiner's Order on the motion shall be subject to review by the Board or its designee. Nothing in this section shall be construed as limiting ERS' discretion to share evidence of criminal misconduct with any appropriate law enforcement authority or to otherwise disclose or use the confidential information as authorized by law. The requirements of Texas Rule of Civil Procedure 76a shall not be applicable in ERS Proceedings.

*§67.74. Telephonic Proceedings.*

(a) Upon timely motion containing the pertinent telephone number(s), a Party may request to appear before the Examiner by telephone or videoconferencing or to present the testimony of a witness by such methods. The Party requesting to appear or present testimony by telephone or videoconferencing has the burden to show that good cause exists for the granting of the request. Unless all Parties agree to the request, the requesting Party must demonstrate:

- (1) how witnesses will be separated;
- (2) that coaching of witnesses shall not occur and how coaching of witnesses will be prevented;
- (3) why observing a witness' demeanor is not essential to the case; and
- (4) how the witness' identity will be verified at the time of hearing.

(b) If the request is granted, a Party may appear or a witness may testify by telephone or videoconferencing before the Examiner if

each participant in the hearing has an opportunity to participate in and hear the Proceeding.

(c) The Examiner may conduct a prehearing conference by telephone or videoconferencing upon reasonable and adequate notice to the Parties, even in the absence of a Party's [Party] motion.

(d) All substantive and procedural rights apply to telephone and videoconferencing prehearings and hearings, subject only to the limitations of the physical arrangement.

(e) Documentary evidence to be offered at a telephone or videoconferencing prehearing conference or hearing shall be served on all Parties and filed at least fourteen (14) days before the prehearing conference or hearing unless the Examiner, by written Order, amends the filing deadline.

(f) For a telephone or videoconferencing hearing or prehearing conference, the following may be considered a failure to appear and grounds for dismissal if the conditions exist for more than 15 minutes after the scheduled time for hearing or prehearing conference:

- (1) failure to answer the telephone or videoconference line;
- (2) failure to free the line for the Proceeding; or
- (3) failure to be ready to proceed with the hearing or prehearing conference as scheduled.

*§67.77. Introduction of Exhibits.*

(a) Form of exhibits. Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of the Examiner, Board or its designee, and whenever practicable, shall conform to the requirements of §67.27 of this chapter (relating to form and content of Pleadings). Exhibits shall be limited to facts that are material and relevant to the issues involved in a particular Proceeding.

(b) Tender and service. The original of each exhibit offered shall be tendered to the Examiner for identification. One copy shall be furnished to the Party or his Authorized Representative. Written or printed documents received in evidence may not be withdrawn except with the approval of the Examiner.

(c) Excluded exhibits. In the event an exhibit has been identified, and not admitted into evidence, the Examiner shall determine whether or not the Party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the Examiner with his ruling, and shall be included in the record for the purpose only of preserving an exception made to the Examiner's ruling that the exhibit is not admissible.

(d) Late exhibits. Unless specifically directed by the Examiner and upon a showing of good cause, no exhibit shall be filed in any Proceeding after the conclusion of the hearing, and then only after a copy of the exhibit has been served on all Parties, and all Parties have been afforded an opportunity to conduct further discovery, cross-examination and offer rebuttal evidence [or cross-examination] regarding such late exhibit.

*§67.83. Filing of Exceptions and Replies.*

(a) Any Party may, no later than thirty (30) days after the date of service of the proposal for decision, file exceptions to the proposal for decision. Replies to the exceptions shall be filed no later than forty-five (45) days after the date of service of the proposal for decision. The Examiner, at his discretion, may grant a reasonable extension of the time to file exceptions and replies. A request for extension of time to file exceptions or replies shall be filed with the Examiner prior to the deadline for filing same, and a copy of the request shall be served on all Parties by the Party making the request. Additional time shall be

allowed only when the interests of justice so require. The Examiner shall have thirty (30) days from the last timely filing of exceptions or replies to modify the proposal for decision or otherwise respond.

(b) Upon the expiration of the earlier of the time to file exceptions (if no exceptions are filed) or the time for the Examiner to respond to any timely filed exceptions or replies, the Examiner shall forward the record to the Executive Director and the proposal for decision may be considered and ruled upon by [the Executive Director,] the Board or its designee as provided in this chapter. The Examiner's jurisdiction in the Proceeding terminates at the time for forwarding the record.

(c) Upon review of the record, the Executive Director may reverse ERS' decision underlying the Proceeding. Otherwise, the Proceeding will be submitted to the Board or its designee for a final administrative decision unless it is resolved informally as allowed by law.

*§67.87. Submission of Appeals to the Board's Designee.*

(a) Except as otherwise provided in this chapter, Proceedings shall be considered by the Board's designee for a final decision, and shall be decided on submission of the record. Upon written motion and a showing of good cause, a Party or his Authorized Representative may make a written request for oral argument before the Board's designee. The request must be filed with the Executive Director no later than the thirtieth (30th) day after the deadline to file exceptions or the Examiner's deadline to respond to exceptions and replies, whichever is later. The designee's decision regarding a request for hearing constitutes final Agency action and no further administrative appeal from the decision is available. If the request is granted, the oral argument shall be conducted in accordance with §67.89 of this chapter (relating to presentation of contested cases to the Board or its designee). In a Proceeding referred to the Board pursuant to §67.5(d) of this chapter (relating to appeals), a request for oral argument shall be directed to the Executive Director.

(b) The Parties may submit written arguments to the Board's designee within thirty (30) days after service of the Examiner's final proposal for decision responding to any exceptions and replies to exceptions filed by the Parties. Responses to such written arguments shall be filed within thirty (30) days after service of the written argument. All written arguments and responses shall be filed with the Executive Director.

(c) Proceedings to be decided upon submission may [shall] be submitted to the Board's designee after sixty (60) days from ERS' receipt of the record from the Examiner and all written arguments and responses, if any.

*§67.89. Presentation of Contested Cases to the Board or its Designee.*

(a) When a request for oral argument is granted pursuant to §67.87 of this chapter (relating to submission of appeals to the Board's designee), the Examiner who prepared the proposal for decision shall, if practicable, present the Proceeding to the Board or its designee during the Board meeting, or the designee's Proceeding, at which the case has been placed for final administrative decision. In presenting the case, the Examiner shall:

- (1) concisely state the nature of the case;
- (2) concisely state the positions of the Parties;
- (3) concisely state his or her proposal for deciding the case and the basis for that proposal; and
- (4) respond to questions concerning the hearing and the proposal directed to him from a Trustee or the Board's designee. The Examiner shall not present information that is not part of the record of the Proceeding.

(b) In a Proceeding that the Executive Director, in his/her [he~~r~~] sole discretion, determines should be set for consideration before the Board, a Party may present oral argument to the Board before the final determination of any Proceeding by filing with the Executive Director a written request to do so at least three (3) business days prior to the day on which the Board is to consider the Proceeding. If such a request is not timely filed, oral argument shall be allowed only at the discretion of the Board. In the event that oral argument is allowed and all Parties are present and prepared to present oral argument, the case will proceed. Otherwise, the Board may, in its sole discretion, hear the case in the absence of any Party, any Authorized Representative or the Examiner, or continue the case to a future meeting. [In Proceedings affected by the Federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104 - 191) ("HIPAA") and rules promulgated pursuant to HIPAA, the Appellant must also file an authorization to allow disclosure of protected health information in any Proceeding before the Examiner, the Board or its designee.]

(c) A Trustee or the Board's designee may question the Examiner concerning the hearing, the evidence, the proposal for decision or any other matter concerning the record of the Proceeding. In responding to a question, the Examiner must advise the chairman of the Board or the Board's designee if the Examiner believes the question involves a matter outside the record of the Proceeding or is otherwise improper. The chairman of the Board or the Board's designee may ask the general counsel for his/her [he~~r~~] opinion concerning the propriety of a particular question. The decision of the chairman of the Board or the Board's designee concerning the propriety of a question shall be final.

(d) A Trustee or the Board's designee may ask the general counsel for his/her [he~~r~~] opinion concerning the legality of a particular course of action or decision, the law or rules governing a particular aspect of matters within the jurisdiction of the Board or its designee, the evaluation of the evidence, or any other legal matter. The general counsel shall advise the chairman of the Board or the Board's designee if the general counsel is of the opinion that responding to a particular question would be inappropriate. The decision of the chairman of the Board or the Board's designee concerning the propriety of a question shall be final.

(e) If oral argument is allowed, then each Party will be given time, not to exceed ten (10) minutes, unless additional time is allowed by the chairman of the Board or the Board's designee, to present oral argument to the Board or its designee. Questions by the Board or its designee and answers to such questions will not be considered as part of the time limitations described in this section. Oral argument concerning matters outside the record and proffered documents not presented during the evidentiary hearing before the Examiner will not be allowed.

(f) After the Examiner presents his proposal for decision, the Trustees or the Board's designee have been given an opportunity to ask questions, oral argument is presented, and the Trustees or the Board's designee have been given an opportunity to discuss and consider the case, the Board or its designee shall act on the case and render a decision.

#### §67.91. Form, Content, and Service of Orders.

(a) All final Orders of the Board or its designee shall be in writing and shall be signed by the chairman of the Board or by the Board's designee. A final decision shall include, adopt or reference findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) Acting in its capacity as fiduciary of the employee benefit plans for which it serves as trustee, the Board or its designee may, in their sole discretion, modify, refuse to accept, or delete any adopted

finding of fact or conclusion of law, or make alternative findings of fact or conclusions of law, if it is determined by the Board or its designee that all or part of the proposal for decision submitted by the Examiner, or a adopted finding of fact or conclusion of law contained therein, is:

- (1) clearly erroneous or illogical;
- (2) against the weight of the evidence;
- (3) based on a misapplication of the rules of evidence or an insufficient review of the evidence;
- (4) based on a medical opinion that is not supported by objective medical evidence, or is not based on reasonable medical probability;
- (5) inconsistent with the terms or intent, as determined by the Board or its designee, of an applicable statute, benefit plan or insurance policy provision;
- (6) confusing, incomplete or misleading;
- (7) immaterial or irrelevant to the issues; or
- (8) not sufficient to protect the interests of the plans and programs for which the Board is trustee, or the interests, as a group, of the Members, retirees or participants covered by such plans and programs. The Order shall contain or reference a written statement of the reason and legal basis for each change made based on the foregoing policy reasons. Correction of nonsubstantive typographical errors do not need to be explained.

(c) A copy of the Board's or its designee's decision or Order shall be served on each Party or his Authorized Representative.

#### §67.93. Administrative Finality.

(a) Administrative action becomes final in any of the following events:

- (1) adoption by the Board or its designee of a final Order and the failure to file a motion for rehearing within the time prescribed by the APA [§67.97 of this chapter (relating to rehearing)].
- (2) adoption by the Board or its designee of a final Order and the denial of a motion for rehearing, either expressly or by operation of law; or
- (3) adoption by the Board or its designee of a final Order which includes a statement that no motion for rehearing will be necessary because an imminent peril to the public health, safety, and welfare, including such peril to a plan or program administered by the Board, requires immediate effect to be given to a final decision or Order.

(b) Any other decisions designated by these rules to constitute final Agency action are subject to requirements for [§67.97 of this chapter regarding] motions for rehearing as provided in the APA.

#### §67.101. Ex Parte Communications.

(a) Unless required for the disposition of ex parte matters authorized by law, the Executive Director, Examiners, Trustees or the Board's designee assigned to render a proposal for decision or Order, or to make proposed [adopted] or adopted findings of fact and conclusions of law in a Proceeding may not communicate, directly or indirectly, in connection with any issue of fact or law with any Party or his Authorized Representative, except on notice and opportunity for all Parties to participate.

(b) Any contact with any Trustees, the Board, or its designee by a Party, an Authorized Representative or someone acting for a Party during the appeal process, other than that described in §67.89 of this chapter (relating to presentation of contested cases to the Board or its designee), is improper.

(c) This rule does not apply to communications between the Executive Director, Board or its designee and their staff, including, but not limited to the ERS general counsel and staff experts as permitted by Government Code §2001.061(c).

§67.103. *Subpoenas.*

(a) The issuance of subpoenas in any Proceeding shall be governed by the subpoena provisions of the APA (Government Code §2001.089). Following written request by a Party or on its own motion, the Executive Director or his/her [hef] designee may issue subpoenas addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a Proceeding. The subpoena may be issued only by the Executive Director or his/her [hef] designee.

(b) Motions for subpoenas to compel the attendance or production of witnesses, the production of books, records, papers, or other objects shall be addressed to the Executive Director and shall be verified and supported by a showing of good cause, and shall specify with reasonable particularity the Persons, books, records, papers, or other objects desired and the material and relevant facts to be proven by them.

(c) Subpoenas shall be issued by the Executive Director only after:

(1) the movant has shown good cause that the subpoena should be issued or all of the Parties have agreed pursuant to §67.11 of this chapter (relating to agreements to be in writing) that a subpoena should be issued; and

(2) the movant has deposited sums sufficient to ensure payment of all expenses incident to the subpoenas. Service of subpoenas and payment of witness fees and expenses shall be made in the manner prescribed in the APA §2001.089, §2001.103 and §67.109 of this chapter (relating to witness fees).

§67.201. *Procedures Governing Bid Protests.*

(a) A vendor who is aggrieved by the solicitation, evaluation, or award of a contract by ERS, hereinafter referred to as the Protesting Party, may file a formal protest with the ERS Chief Financial Officer. Such protests must be in writing and received in the ERS Chief Financial Officer's office within 10 calendar days after the Protesting Party knows, or reasonably should have known, of the occurrence of the action that is protested. Formal protests must conform to the requirements of this subsection, subsection (c) and, when applicable, subsection (d) of this section, and shall be resolved in accordance with the procedure set forth in subsections (f), (g) and (h) of this section. Copies of the protest must be mailed or delivered by the Protesting Party to ERS and other Interested Parties. For the purposes of this section, "Interested Parties" means all vendors who have submitted bids or proposals for the applicable contract. The protest must be mailed or delivered to Interested Parties contemporaneously with filing the protest with ERS' Chief Financial Officer.

(b) In the event of a timely protest or appeal under this section, ERS shall not proceed further with the solicitation or with the award of the contract unless the ERS Executive Director makes a written determination that the award of the contract or implementation of the contract without delay are necessary to protect the best interests of ERS.

(c) A formal protest must be sworn and, under the penalties of perjury, contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved; and

(5) argument and authorities in support of the protest.

(d) If ERS utilized the professional services of an actuary in connection with any recommendation to award the contract to a vendor, then this subsection shall apply. If ERS determines that it may need to utilize the services of an actuary in its efforts to resolve the protest, the Protesting Party shall be required to post a bond in an amount no less than the estimated cost to ERS for such actuarial services. The amount of the bond shall be determined by the ERS Chief Financial Officer. The Protesting Party shall post the bond within five calendar days of notice from ERS that such bond is required or shall be deemed to have waived the right to protest.

(1) If actuarial services are utilized by ERS and the bid protest is not finally resolved in favor of the Protesting Party, the Protesting Party shall be required to forfeit its bond.

(2) If actuarial services are not utilized by ERS and/or the bid protest is finally resolved in favor of the Protesting Party, the Protesting Party's bond shall be returned to the Protesting Party after final resolution of the bid protest.

(e) The ERS Chief Financial Officer may confer with the ERS General Counsel and/or Director of Procurement in his/her review of the protest.

(f) The ERS Chief Financial Officer shall have the authority to settle and resolve the dispute concerning the solicitation or award of a contract, and may accept written responses to the protest from Interested Parties and ERS staff.

(g) If the protest is not resolved by mutual agreement, the ERS Chief Financial Officer will issue a written determination on the protest.

(1) If the ERS Chief Financial Officer determines that no violation of rules or statutes has occurred, he/she shall so inform the Protesting Party and Interested Parties by letter that sets forth the reasons for the determination.

(2) If the ERS Chief Financial Officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he/she shall so inform the Protesting Party and Interested Parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(h) The ERS Chief Financial Officer's determination on a protest may be appealed by the Protesting Party to the ERS Deputy Executive Director. An appeal of the ERS Chief Financial Officer's determination must be in writing and must be received in the ERS Deputy Executive Director's office no later than 10 calendar days after the date of the ERS Chief Financial Officer's determination. The appeal shall be limited to review of the ERS Chief Financial Officer's determination. Copies of the appeal must be mailed or delivered by the Protesting Party to ERS and Interested Parties contemporaneously with filing the appeal to the ERS Deputy Executive Director.

(i) The ERS Deputy Executive Director may confer with the ERS General Counsel and/or Director of Procurement in his/her review of the matter appealed.

(j) A decision issued in writing by the ERS Deputy Executive Director shall be the final administrative action of ERS, and no further appeal shall be permitted.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504089

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (877) 275-4377



### 34 TAC §§67.17, 67.95, 67.97

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

The repeals are proposed under Texas Government Code §815.102(a)(4), which provides authorization for the ERS Board of Trustees to adopt rules for hearings on contested cases or disputed claims.

No other statutes are affected by the proposed repeals.

§67.17. *Parties Defined.*

§67.95. *Effective Date of Order.*

§67.97. *Rehearing.*

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504090

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (877) 275-4377



## CHAPTER 71. CREDITABLE SERVICE

### 34 TAC §71.2, §71.14

The Employees Retirement System of Texas (ERS) proposes amendments of 34 Texas Administrative Code (TAC) §71.2 and §71.14, concerning Membership Waiting Period for Employee Class and Payments to Establish or Reestablish Service Credit.

In 2003, the Texas Legislature instituted a 90-day wait for new employees to become contributing members of ERS. ERS adopted §71.2 to clarify who was subject to the waiting period and when that employee would be eligible to become a member. Chapter 331 (H.B. 9), Acts of the 84th Legislature, Regular

Session, 2015, amended §812.003, Texas Government Code, to eliminate the 90-day waiting period effective September 1, 2015. ERS proposes amending §71.2 to conform with this amended statute while retaining the ability of members who served this waiting period the ability to purchase the service.

Section 71.14, concerning Payments to Establish or Reestablish Service Credit, is also being amended to clarify that any interest paid as part of a payment to establish or reestablish service credit is not charged as a penalty.

ERS has determined that for the first five-year period the rules are in effect, the cost to the state following the statutory elimination of the waiting period will be approximately \$80 million in all funds, or approximately \$16 million per fiscal year, according to the fiscal note for H.B. 9 prepared by the Legislative Budget Board on May 25, 2015. There will be no fiscal implication for local government as a result of enforcing or administering the rules. To ERS' knowledge, the anticipated economic costs to persons who are required to comply with the rules as proposed will include the additional \$16 million per fiscal year in additional employee contributions to the ERS trust fund, as estimated by the Legislative Budget Board. And, to ERS' knowledge, small businesses should not be affected by the rule amendments.

ERS also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be to delete unnecessary or repealed procedures and improve the funded status of the ERS trust fund.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at [paula.jones@ers.state.tx.us](mailto:paula.jones@ers.state.tx.us). The deadline for receiving comments is Monday, November 16, 2015, at 10:00 a.m.

The amendments are proposed under the Texas Government Code, §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for eligibility of membership in the retirement system and the transaction of any other business the ERS Board of Trustees considers necessary for the retirement system.

No other statutes are affected by the proposed amendments.

§71.2. *Membership Waiting Period for Employee Class.*

~~{(a) For an individual who begins employment or office holding on or after September 1, 2003, membership in the employee class begins on the 91st day after the end of a 90 calendar day waiting period.}~~

~~{(b) For purposes of this section, an individual who is not considered to be a member and is subject to the 90-day waiting period includes an individual who has withdrawn contributions for previous service credited in the employee class.}~~

(a) ~~{(e)}~~ In determining the date of eligibility for membership in the employee class for an employee who ~~was~~ ~~[is]~~ subject to the waiting period, the following provisions apply:

(1) the system shall count the date of employment as the first day of the 90-day waiting period;

(2) the date of employment means the date on which an individual ~~began~~ ~~[begins]~~ to perform service or hold office.

~~{(d) Contributions for membership service in the employee class begin on the first day of the calendar month following completion of the 90-day waiting period.}~~



(b) [(e)] Service credit for service performed during the 90-day waiting period described by this section may be established at the actuarial present value as provided in §71.31 of this chapter and Texas Government Code §813.514.

(c) [(f)] Waiting periods prior to September 1, 1973 are considered membership service not previously established and may be established as provided in §71.14.

*§71.14. Payments to Establish or Reestablish Service Credit.*

(a) A member or contributing member may purchase eligible service creditable in the retirement system in accordance with the Government Code, Chapter 813. The retirement system shall grant the applicable amount of service credit after each payment made under this section is equal to the amount required to establish one or more months of creditable service.

(b) Service credit that may be established or reestablished includes military service credit, service credit previously cancelled, and service credit not previously established.

(c) A contributing member of the Employees Retirement System of Texas (ERS) may file with the member's state employer, a contract to establish or reestablish service credit through a monthly payroll deduction installment plan. The state agency shall provide the ERS a signed copy of the contract not later than the date the service purchase contribution is reported to the ERS. Members with payroll deductions that will result in less than the amount required to establish one month of creditable service by fiscal year end will be provided written notice at the time the contract is received by the ERS, that a balloon payment will be due at fiscal year end; otherwise additional [penalty] interest will accrue on the service cost.

(d) The contributing member shall designate the amount to be deducted from the member's salary and deposited each month with the ERS. The total amount deducted in any one fiscal year must equal or exceed the cost to establish one month of service credit. Excess payments of \$5.00 or greater will be applied to the next fiscal year service purchase contract, if eligible. In the event the member does not negotiate a new contract within 60 days of a new fiscal year or there is no remaining service for purchase, any overpayment of \$5.00 or greater will be refunded to the member. Any remaining credit of less than \$5.00 will be deposited as [penalty] interest toward the last purchase period established and will not be subject to refund.

(e) A member who ceases to hold a position or who withdraws authority for payroll deduction while making payments through payroll deduction may contract with the ERS for an alternative method of continuing the payment in accordance with procedures developed by the ERS.

(f) The ERS shall develop procedures and forms to be used in connection with this section.

(g) A member who has contributed to both the Law Enforcement and Custodial Officer Supplemental Retirement (LECOS) fund and the ERS defined benefit plan will be allowed to purchase previously refunded Commissioned Peace Officer and Custodial Officer (CPO/CO) service and/or employee class service within the defined benefit plan. If a member purchases employee class service only and decides later to retire as a CPO/CO, the member must purchase the unpaid portion of service credit attributable to CPO/CO service, which will include any additional contribution to the LECOS fund plus interest, in order to receive creditable service and retire as a CPO/CO. If the member does not purchase the unpaid portion of the service credit attributable to CPO/CO service, then the service shall only be creditable for the employee class of membership.

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

Filed with the Office of the Secretary of State on September 30, 2015.

TRD-201504091

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Earliest possible date of adoption: November 15, 2015

For further information, please call: (877) 275-4377



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

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

#### **CHAPTER 145. PAROLE**

##### **SUBCHAPTER A. PAROLE PROCESS**

###### **37 TAC §145.12**

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.12 concerning action upon review. The amendments are proposed as a result of House Bill 1914.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to bring the rules into compliance with House Bill 1914. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to [bettie.wells@tdcj.state.tx.us](mailto:bettie.wells@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.036 508.0441, 508.045, and 508.141 Texas Government Code. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels; Sections 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.

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

§145.12. *Action upon Review.*

A case reviewed by a parole panel for parole consideration may be:

(1) (No change.)

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review date (Month/Year) for an offender serving a sentence listed in Section [§] 508.149(a), Government Code, or serving a sentence for second or third degree under Section [§] 22.04 of the Penal Code, may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial, unless the inmate is serving a sentence for an offense under Section 22.021, Penal Code, or a life sentence for a capital felony, in which event the designated month must begin after the first anniversary of the date of the denial and end before the 10th anniversary of the date of the denial. The next review date for an offender serving a sentence not listed in Section [§] 508.149(a), Government Code, shall be as soon as practicable after the first anniversary of the denial;

(3) denied parole and ordered serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five years for offenders serving sentences listed in Section [§] 508.149(a), Government Code, or serving a sentence for second or third degree under Section [§] 22.04 of the Penal Code; or greater than 10 years for offenders serving a sentence under Section 22.021, Penal Code, or a life sentence for a capital felony; or greater than one year for offenders not serving sentences listed in Section [§] 508.149(a), Government Code. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;

(4) (No change.)

(5) any person released to parole after completing a TDCJ program as a prerequisite for parole, must participate in and complete any required post-release program. A parole panel shall require as a condition of release on parole or release to mandatory supervision that an offender who immediately before release is a participant in the program established under Section [§] 501.0931, Government Code, participate as a releasee in a drug or alcohol abuse continuum of care treatment program; or

(6) (No change.)

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

Filed with the Office of the Secretary of State on October 5, 2015.

TRD-201504124

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 15, 2015

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



## CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

### 37 TAC §§146.3 - 146.12

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 146, §§146.3 - 146.12, concerning revocation of parole or mandatory supervision. The amendments are proposed to capitalize titles and update statutory references with the current format used throughout the rules. The amendments to §146.3 add language for the Board Administrator's designee to make attorney determination decisions. Section 146.6 amendments relate to the Board Policy BPP-POL.146.252 Preliminary Hearings-Pending Criminal charges. The amendments to §146.7 update the language to be consistent with Board Rules 146.6(a) and 146.8(c)(1) and (2). The amendments to §146.8 update the language to be consistent with Board Rule 146.6(a)(2).

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering the amended sections.

Mr. Gutiérrez also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended rules will be to bring the rules in compliance with current Board practices. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amended rules will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to [bettie.wells@tdcj.state.tx.us](mailto:bettie.wells@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of the proposed rules.

The amended rules are proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

§146.3. *Right to Counsel.*

The Board Administrator [~~board administrator~~] or [~~the~~] designee [~~of the board administrator~~] shall weigh the following factors in determining whether the releasee is to be appointed an attorney:

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

§146.4. *Procedure after Waiver of Preliminary Hearing.*

(a) Following the waiver of the right to a preliminary hearing, the parole panel or a designee of the Board [~~board~~] may proceed to a revocation hearing after a finding of probable cause or reasonable belief that the releasee violated a condition of parole or mandatory supervision.

(b) The parole panel or designee of the Board [~~board~~] may accept a waiver of the preliminary hearing provided that a waiver of the preliminary hearing includes the following:

(1) information that releasee was served with the following:

(A) - (D) (No change.)

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the Hearing Officer [hearing officer] specifically finds good cause for not allowing confrontation of the witness;

(F) notice that the case will be heard by a parole panel or designee of the Board [board];

(G) notice that the releasee has the opportunity to waive in writing the right to either or both the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board [board] will in all probability revoke; and

(H) (No change.)

(2) (No change.)

*§146.5. Procedure after Waiver of Revocation Hearing.*

(a) (No change.)

(b) If final Board [board] disposition is an order to revoke the parole or mandatory supervision, the releasee or attorney shall be notified in writing of the decision of the parole panel.

*§146.6. Scheduling of Preliminary Hearing.*

(a) Upon request, the Board [board] or the Board's [board's] scheduling staff shall schedule a preliminary hearing unless:

(1) (No change.)

(2) information has not been presented to the Board [board] or the Board's [board's] scheduling staff that the releasee was served with the following:

(A) - (D) (No change.)

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the Hearing Officer [hearing officer] specifically finds good cause for not allowing confrontation of the witness;

(F) notice that the case will be heard by a parole panel or designee of the Board [board];

(G) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board [board] will in all probability revoke; and

(H) (No change.)

(b) (No change.)

(c) If the Board [board] or the Board's [board's] scheduling staff receives a request for a preliminary hearing later than the fourteenth calendar day following the provisions described in subsection (a)(1) of this section, the Board [board] or the Board's [board's] scheduling staff shall require the requestor to provide an explanation of the delay.

(d) Subsection (a)(1) of this section does not apply when a releasee is:

(1) transferred under Government Code, Section [§]508.284, [Government Code], to a correctional facility operated by or under contract with the department; or

(2) (No change.)

(e) (No change.)

*§146.7. Preliminary Hearing.*

(a) The parole panel or designee of the Board [board] shall conduct the preliminary hearing. The purpose of the preliminary hearing is to determine whether there is probable cause or a reasonable belief that the releasee violated a condition of parole or mandatory supervision.

(b) (No change.)

(c) If the decision of the parole panel or designee of the Board [board] is that there is probable cause or reasonable belief to proceed to a revocation hearing, upon the request of the parole panel, [or] designee of the Board or the parole officer, the Board's scheduling staff [board] may schedule a revocation hearing;[:]

(1) at the conclusion of the hearing, or

(2) after a pending charge is adjudicated.

(d) If the parole panel or the designee of the Board [board] finds that there is no probable cause or reasonable belief to proceed to a revocation hearing or does not schedule a revocation hearing, the parole panel or designee of the Board [board] shall collect, prepare[:], and forward to a parole panel, or to the TDCJ PD [Parole Division] Interstate Compact for Probation and Parole Supervision, if the hearing was held pursuant to the Interstate Commission for Adult Offender Supervision rules, the following information:

(1) (No change.)

(2) a summary report of the evidence relied upon to formulate the Hearing Officer's [hearing officer's] findings; and

(3) (No change.)

(e) - (f) (No change.)

*§146.8. Scheduling of Revocation Hearings.*

(a) Upon request, the Board [board] or the Board's [board's] scheduling staff shall schedule a revocation hearing unless information has not been presented to the Board [board] or the Board's [board's] scheduling staff that the releasee was served with the following:

(1) - (4) (No change.)

(5) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the Hearing Officer [hearing officer] specifically finds good cause for not allowing confrontation of the witness;

(6) (No change.)

(7) notice that the case will be heard by a parole panel or designee of the Board [board];

(8) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board [board] will in all probability revoke; and

(9) (No change.)

(b) If the releasee is not entitled to a preliminary hearing and requests a revocation hearing, the Board [board] or the Board's [board's] scheduling staff shall schedule a revocation hearing unless:

(1) (No change.)

(2) information has not been presented to the Board or the Board's scheduling staff [hearings section] that the releasee was served with the following:

(A) - (D) (No change.)

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the Hearing Officer [~~hearing officer~~] specifically finds good cause for not allowing confrontation of the witness;

(F) (No change.)

(G) notice that the case will be heard by a parole panel or designee of the Board [~~board~~];

(H) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board [~~board~~] will in all probability revoke; and

(I) (No change.)

(c) If the Board [~~board~~] or the Board's [~~board's~~] scheduling staff receives a request for a revocation hearing later than the fourteenth calendar day following the provisions described in subsection (b)(1) of this section, the Board [~~board~~] or the Board's [~~board's~~] scheduling staff shall require the requestor to provide an explanation of the delay.

(d) Subsection (b)(1) of this section does not apply when a releasee is:

(1) transferred under Government Code, Section [§]508.284, [~~Government Code~~], to a correctional facility operated by or under contract with the department; or

(2) (No change.)

(e) - (f) (No change.)

§146.9. *Revocation Hearing.*

(a) The parole panel or designee of the Board [~~board~~] shall conduct the revocation hearing. The purpose of the revocation hearing is to consider the evidence offered pursuant to an allegation of a violation of a condition of parole or mandatory supervision. The parole panel or designee of the Board [~~board~~] must determine whether it is shown by a preponderance of the credible evidence that the releasee violated a condition of parole or mandatory supervision.

(b) The revocation hearing shall not proceed to the mitigation phase unless it is determined by the parole panel or designee of the Board [~~board~~] by a preponderance of the credible evidence that the releasee did violate a condition of parole or mandatory supervision.

(c) At the close of the hearing or within a reasonable time thereafter, the parole panel or designee of the Board [~~board~~] shall collect, prepare and forward to the parole panel:

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

§146.10. *Final Board Disposition.*

(a) After reviewing the report of the hearing, the parole panel may make final disposition of the case by taking one of the following actions:

(1) (No change.)

(2) recommend to the Governor [~~governor~~] that the conditional pardon be continued, revoked, or modified; or

(3) (No change.)

(4) refer the case to the Hearing Officer [~~hearing officer~~], with or without reopening the hearing, for further development of issues as specified by the parole panel.

(b) If final Board [~~board~~] disposition is an order to revoke the parole or mandatory supervision, the releasee or attorney shall be notified in writing and provided with a copy of the report of the Hearing Officer [~~hearing officer~~] and notice of the right to submit a motion to reopen the hearing.

§146.11. *Releasee's Motion to Reopen Hearing or Reinstate Supervision.*

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

(c) Any such request for reopening made under this section must be in writing and delivered to the Board [~~board~~] or placed in the United States mail and addressed to the Texas Board of Pardons and Paroles, Attention: General Counsel, 8610 Shoal Creek Blvd., Austin, Texas 78757.

(d) On transmittal, a parole panel designated by the chair other than the original panel shall dispose of the motion by:

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

(3) reversal of the panel decision previously entered and withdrawal of the Board's [~~board's~~] revocation warrant, under the same terms and provisions as provided in §146.10 of this title (relating to Final Board Disposition).

(e) - (f) (No change.)

§146.12. *Procedure after Motion to Reopen is Granted; Time; Rights of the Releasee; Final Disposition.*

(a) When the parole panel disposes of a releasee's motion to reopen under §146.11 of this title (relating to Releasee's Motion to Reopen Hearing or Reinstate Supervision) by granting said motion to reopen the hearing, the case shall be disposed of or referred to a parole panel or designee of the Board [~~board~~] for final disposition in accordance with this section and the previous disposition of the case made by the parole panel under §146.10 of this title (relating to Final Board Disposition) shall be set aside and shall be of no force and effect.

(b) The purpose of the further proceedings before the parole panel or designee of the Board [~~board~~] under this section shall be as specified by the parole panel in its order granting the releasee's motion to reopen pursuant to §146.11(d)(1) of this title.

(c) When the parole panel or designee of the Board [~~board~~] convenes the reopening of the hearing, it shall have before it the entire record previously compiled in the case, including:

(1) the record, report, and recommendation of the preliminary hearing under §146.7 of this title (relating to Preliminary Hearing) or revocation hearing under §146.9 of this title (relating to Revocation Hearing) collected or prepared by the designee of the Board [~~board~~] originally assigned to the case;

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

(4) any transmittal submitted to the parole panel with recommendation from Board [~~board~~] staff. Any transmittal submitted to the parole panel by the General Counsel [~~general counsel~~] constitutes legal advice which is confidential under law, and shall not be released to the public as part of the hearing packet.

(d) At the conclusion of the proceedings before the parole panel or designee of the Board [~~board~~], or within a reasonable time thereafter, the parole panel shall make final disposition of the case by taking one of the following actions in any manner warranted by the evidence:

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

(4) if the releasee received a conditional pardon, recommend to the Governor [~~governor~~] that the revocation action be continued, modified, or rescinded.

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 October 16, 2015.

TRD-201504125

Bettie Wells

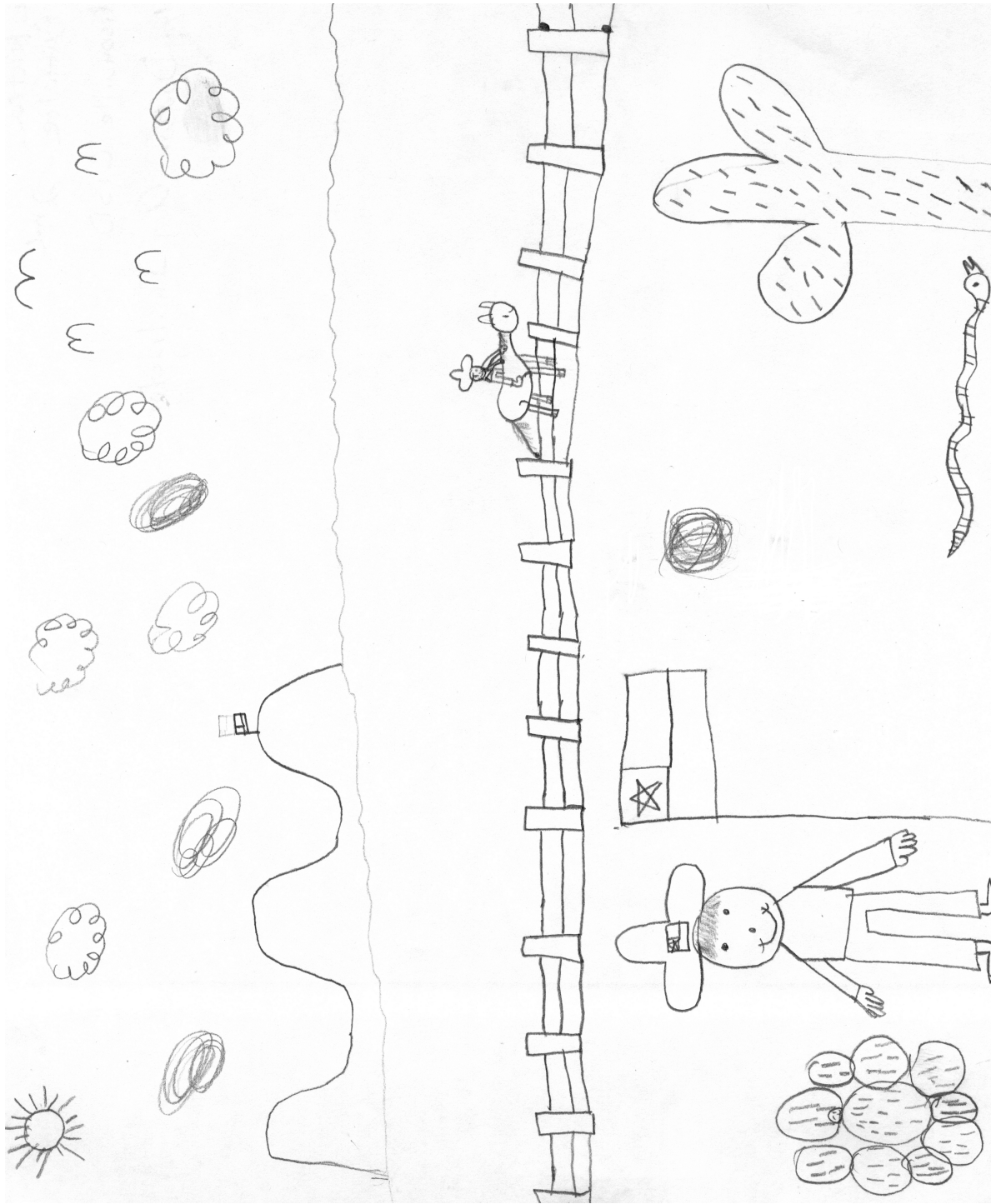
General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 15, 2015

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





# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

#### CHAPTER 221. PROFICIENCY CERTIFICATES

##### 37 TAC §§221.43, 221.45, 221.47

Proposed new §§221.43, 221.45 and 221.47, published in the March 27, 2015, issue of the *Texas Register* (40 TexReg 1811),

are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on October 1, 2015.  
TRD-201504107







# 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 16. ECONOMIC REGULATION

### PART 8. TEXAS RACING COMMISSION

#### CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

##### SUBCHAPTER D. GREYHOUND RACETRACKS

##### DIVISION 2. OPERATIONS

###### 16 TAC §309.365

The Texas Racing Commission adopts new rule 16 TAC §309.365, relating to breakage generated at greyhound racing associations, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4133). The rule will not be republished.

"Breakage" is the amount left over after payouts to the patrons are calculated in multiples of 10 cents. In most cases, the Texas Racing Act directs that the breakage will be paid to a specific purpose, such as the Accredited Texas Bred Fund. Prior to 2007, §6.09(d) of the Act specified that 50% of the breakage from greyhound racing was to be used as part of the Commission's operating budget. However, HB 2701, 80th Regular Session, removed that provision and failed to substitute another purpose for the 50%. Since that time, each greyhound association that generated this breakage has retained the undirected 50% by default.

The new rule requires a greyhound racing association to pay fifty percent of the breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool to the Texas Greyhound Association. The rule also explicitly provides that the greyhound racing association will retain the remaining fifty percent of the breakage. The rule formalizes the existing practice in place at greyhound racing associations and is consistent with the statutory provisions relating to breakage found in §6.09(d) of the Act.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing involving wagering and to adopt other rules to administer the Act.

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

Filed with the Office of the Secretary of State on September 29, 2015.

TRD-201504059

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: October 19, 2015

Proposal publication date: June 26, 2015

For further information, please call: (512) 833-6699



#### CHAPTER 311. OTHER LICENSES

##### SUBCHAPTER B. SPECIFIC LICENSES

###### 16 TAC §311.101, §311.102

The Texas Racing Commission adopts amendments to 16 TAC §311.101 and §311.102, relating to horse owners and to greyhound owners, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4134). The rules will not be republished.

The amendments address two issues. First, to be licensed as an Owner, Owner/Trainer, or Owner/Assistant Trainer, a person must be the owner of record of a properly registered horse that the person intends to race in Texas. The purpose of the restriction is to prevent individuals from obtaining an Owner's license merely to improperly gain its associated privileges, such as unrestricted access to the secured backside. However, the restriction does not take into consideration that trainers and assistant trainers, who already have these privileges, often buy and sell horses over the period of licensure and therefore may not own a horse at the particular time of applying for a license. Under current rule §311.101, when the applicant for an Owner/Trainer type license cannot show proof of horse ownership, the agency issues a Trainer's license only rather than an Owner/Trainer. Then, when the Trainer or Assistant Trainer becomes an owner of a properly registered horse, he or she must reapply for an Owner/Trainer license and again pay the \$100 license fee. The amendment addresses this issue by allowing an applicant for a Trainer's or Assistant Trainer's license to also obtain an Owner's license if the person states an intention to own horses during the term of the license.

The second issue affects both §311.101 and §311.102. If a horse owner or greyhound owner is unable to complete an application for an owner's license because of absence or illness, the licensed trainer may apply for an emergency license on behalf of the owner. Currently the trainer must submit at least the following information: the owner's full name, home or business address, telephone number, and social security number. However, the trainer sometimes cannot get in touch with the owner to obtain the social security number. On other occasions, the owner is reluctant to provide this personal information to the trainer due to concerns about identity theft. Aware of these concerns, agency

staff has determined that the social security number is not crucial to the issuance of the emergency license, especially since the owner must provide all of the required licensing information, including the social security number, within 21 days of issuance of the emergency license. The amendment removes the social security number from the list of required information in order to secure an emergency owner's license.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing involving wagering and to adopt other rules to administer the Act, and §7.02, which requires the Commission to adopt categories for licenses and to specify by rule the qualifications and experience for licensing in each category that requires specific qualifications or experience.

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

Filed with the Office of the Secretary of State on September 29, 2015.

TRD-201504061  
Mark Fenner  
General Counsel  
Texas Racing Commission  
Effective date: October 19, 2015  
Proposal publication date: June 26, 2015  
For further information, please call: (512) 833-6699



## SUBCHAPTER C. RESPONSIBILITIES OF INDIVIDUALS

### 16 TAC §311.216, §311.218

The Texas Racing Commission adopts an amendment to 16 TAC §311.216, relating to conduct in the stable area, and the creation of new 16 TAC §311.218, relating to safety equipment, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4135). The rules will not be republished.

The current rules require that anyone on association grounds who is mounted on a horse or who is holding a horse in a starting gate must wear an A.S.T.M. safety helmet. The rules also require a jockey in a race to wear a vest "designed to provide shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association." However, these rules are no longer consistent with the model rules of the Association of Racing Commissioners International (ARCI). ARCI's model rules recognize alternative safety standards in addition to those of A.S.T.M. Many licensees from other states have safety equipment that meets these other standards, yet if the Commission were strictly apply its own rules to these licensees, they would have to purchase new A.S.T.M. equipment that may or may not be as safe as the ARCI-compliant equipment they already own. New rule §311.218, Safety Equipment, directly follows the relevant language of ARCI's model rule, and the amendment to §311.216 changes an existing reference to

safety equipment so it refers instead to the standards of new §311.218.

The Commission received one comment in favor of the proposed amendment and new rule from the Jockeys' Guild.

The new rule and amendment are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing involving wagering and to adopt other rules to administer the Act.

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

Filed with the Office of the Secretary of State on September 29, 2015.

TRD-201504062  
Mark Fenner  
General Counsel  
Texas Racing Commission  
Effective date: October 19, 2015  
Proposal publication date: June 26, 2015  
For further information, please call: (512) 833-6699



## CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

### SUBCHAPTER D. RUNNING OF THE RACE

#### DIVISION 1. JOCKEYS

##### 16 TAC §313.405, §313.406

The Texas Racing Commission adopts an amendment to 16 TAC §313.405, relating to whips and other equipment, and 16 TAC §313.406, relating to colors and number, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4136). The rules will not be republished.

The amendment change existing descriptions of safety equipment in §313.405 and §313.406 so they refer instead to the standards of new §311.218. In addition, the proposal to amend §313.406 addresses an issue with the requirement that Quarter Horses, Paints, and Appaloosas wear head numbers. On occasions, a head number will fall off during the post parade due to equipment failure and the association will not have a ready supply of extras. On other occasions, a particular horse may have a strong aversion to wearing a head number. On these occasions, the stewards do not currently have the authority to waive the head number requirement for Quarter Horses, Paints, and Appaloosas. The amendment to §313.406 provides the stewards with the authority to waive the head number requirement in the case of equipment failure, missing equipment, or in the interest of safety.

The Commission received one comment from a representative of the Jockeys' Guild in favor of the proposed amendments relating to safety equipment. The Commission agrees with the commenter and adopts the proposals without changes to the proposed text. The Commission received no comments on the proposed amendment to §313.406 as it relates to head numbers.

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing involving wagering and to adopt other rules to administer the Act.

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

Filed with the Office of the Secretary of State on September 29, 2015.

TRD-201504063  
Mark Fenner  
General Counsel  
Texas Racing Commission  
Effective date: October 19, 2015  
Proposal publication date: June 26, 2015  
For further information, please call: (512) 833-6699



## CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING

### SUBCHAPTER B. ENTRIES AND PRE-RACE PROCEDURES

#### 16 TAC §315.111

The Texas Racing Commission adopts an amendment to 16 TAC §315.111, relating to greyhound schooling races, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4137). The rule will not be republished.

The amendment corrects an error in subsection (b) of the rule, which currently concerns scratches rather than schooling races. The amendment follows the model rules of the Association of Racing Commissioners International by establishing that all schooling races shall be at a distance of no less than three-sixteenths of a mile unless otherwise approved by the judges. The amendment is necessary in order to establish a uniform minimum length for schooling races, which are used by patrons in their handicapping decisions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing involving wagering and to adopt other rules to administer the Act.

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

Filed with the Office of the Secretary of State on September 29, 2015.

TRD-201504065

Mark Fenner  
General Counsel  
Texas Racing Commission  
Effective date: October 19, 2015  
Proposal publication date: June 26, 2015  
For further information, please call: (512) 833-6699



## CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

### SUBCHAPTER A. GENERAL PROVISIONS

#### 16 TAC §319.1

The Texas Racing Commission adopts an amendment to 16 TAC §319.1, relating to the purpose and definitions within Chapter 319, Veterinary Practices and Drug Testing, without changes to the proposed text as published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4138). The rule will not be republished.

As drug testing technologies and skills have improved, racing laboratories have developed the ability to detect when otherwise naturally-occurring substances have been administered in inappropriate levels to race animals. The significance of this issue has been increased recently by the discovery of high levels of cobalt in race horses, particularly at the Meadowlands and in Australia. Cobalt is a mineral that is essential in all mammals, and is normally ingested as part of Vitamin B12. However, administration of bulk cobalt salts to humans and other species has been demonstrated to increase red blood cell production, and such administration in race horses should be regarded as an attempt to improperly influence the outcome of a race. Currently, the Commission's rules do not include artificially high levels of naturally occurring substances within the definition of a "prohibited drug, chemical or other substance." Therefore, it would be difficult to prosecute a trainer for high levels of cobalt or any other naturally-occurring substance. The amendment addresses this problem by including in the definition of a "prohibited drug, chemical or other substance" those substances present in a race animal in excess of concentrations at which such substances could occur naturally.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing involving wagering and to adopt other rules to administer the Act, and §3.16, which requires the Commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race, including rules relating to the use of a prohibited device or prohibited substance.

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

Filed with the Office of the Secretary of State on September 29, 2015.

TRD-201504066



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

##### SUBCHAPTER A. STATE BOARD OF EDUCATION RULES

###### 19 TAC §33.65

The State Board of Education (SBOE) adopts amendment to §33.65, concerning the guarantee program for school district bonds. The amendment is adopted with changes to the proposed text as published in the August 7, 2015 issue of the *Texas Register* (40 TexReg 4980). The section establishes provisions for the administration of the bond guarantee program. The adopted amendment modifies the definition of *nationally recognized investment rating firm* and allows, under certain conditions, student and teacher housing as projects eligible for a guarantee under the definition of *new money issue*. The adoption also increases the multiplier used in calculating the capacity of the Permanent School Fund (PSF).

REASONED JUSTIFICATION. Section 33.65 is the rule the SBOE adopted to implement the PSF Bond Guarantee Program. The rule sets out the statutory provisions for the Bond Guarantee Program, provides definitions, specifies bond eligibility requirements, and explains the requirements of and policies related to the program's application process. The rule also describes how PSF capacity to guarantee bonds is determined, provides limitations on access to the program, and allows for the commissioner to allocate specific holdings of the PSF under certain conditions. In addition, the rule provides requirements specific to districts that have declared financial exigency, explains what effect defeasance has on guaranteed bonds, and sets out specific program conditions for bonds issued or guaranteed on certain specified dates. The rule also explains program payment conditions and guarantee restrictions.

The adopted amendment to 19 TAC §33.65 modifies two definitions in subsection (b) and modifies a calculation in subsection (e), as follows.

To maximize the coverage of the fund, the SBOE previously adopted in rule a prohibition for a district to qualify for a guarantee after an investigation of the applicant if the district would earn a similar investment rating on their own without the bond guarantee. The current definition in subsection (b)(9) of a *nationally recognized investment rating firm* expired on September 1, 2015. The board requested that the agency develop a request for qualifications (RFQ) to select nationally recognized statistical rating organizations that are eligible for use. This adoption amends the bond guarantee program rule for school districts to

reference the qualifications that the agency developed during the RFQ process.

The definition in subsection (b)(10) of a *new money issue* eligible for the guarantee did not explicitly exclude student and teacher housing from the projects that can be guaranteed. At proposal, the amendment excluded these projects from being eligible for the guarantee. At adoption, however, the SBOE took action to allow student or teacher housing when it is an integral part of the educational mission of the school district as determined by the commissioner. This change is consistent with a change made to the bond guarantee rule for charter schools.

The multiplier in subsection (e)(1) used in the calculation of capacity was set at three times the value of the fund. The adoption increased this multiplier to three and one-fourth times the cost value of the PSF in accordance with the board's authority to increase the multiplier.

Subsequent to the July 2015 SBOE meeting, as directed by the Committee on School Finance/Permanent School Fund, staff gathered input regarding the prohibition against using the Bond Guarantee Program to guarantee bonds to construct student and teacher housing. Staff provided the committee with the results of the input at its September 2015 meeting. The SBOE took action to approve changes to subsection (b)(10) at adoption consistent with the changes made to the rule for charter schools.

The amendment to 19 TAC §33.65 was approved by the SBOE for first reading and filing authorization at its July 17, 2015 meeting and for second reading and final adoption at its September 11, 2015 meeting.

The effective date of the adopted amendment is August 22, 2016, since the motion to specify an effective date earlier than the beginning of the 2016-2017 school year did not pass by a vote of two-thirds of the SBOE members.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under the TEC, Chapter 45, Subchapter C; TEC, §45.053(d), which authorizes the SBOE to adopt rules to increase the limit specified in TEC, §45.053(a), to an amount not to exceed five times the cost value of the Permanent School Fund, provided that the increased limit is consistent with federal law and regulations and does not prevent the bonds to be guaranteed from receiving the highest available credit rating, as determined by the SBOE; TEC, §45.063, which authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program; and the Texas Constitution, Article VII, Section 5, which authorizes the bond guarantee program.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§7.102(c)(33), 45.053(d), and 45.063, and the Texas Constitution, Article VII, Section 5.

§33.65. *Bond Guarantee Program for School Districts.*

(a) Statutory provision. The commissioner of education must administer the guarantee program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for school district bonds.

(1) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the guarantee is sought as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the district has outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) The annual debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the Texas Education Agency (TEA) has sufficient evidence of the discharge or defeasance of such debt.

(C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement, or if there is no official statement, debt service amounts based on the maximum rate permitted by the bond order or other bond proceeding that establishes a maximum interest rate for the bonds.

(2) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(3) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(4) Bond--A debt security issuance approved by the attorney general, issued under the TEC, §45.003 or §45.004, to provide long-term financing with a maturity schedule of at least three years.

(5) Bond Guarantee Program (BGP)--The guarantee program that is described by this section and established under the TEC, Chapter 45, Subchapter C.

(6) Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds and the pricing certificate, if any, establishing the terms of the bonds executed pursuant to such order.

(7) Combination issue--An issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(8) Enrollment growth--Growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.

(9) Nationally recognized investment rating firm--An investment rating firm that is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization (NRSRO) and is demonstrating that it has:

(A) had its current NRSRO designation for at least three consecutive years;

(B) provided credit ratings to each of the following:

(i) fifteen or more fixed income securities denominated in United States dollars and issued during the immediately preceding three years; and

(ii) ten or more school districts in the United States; and

(C) a documented separation of duties between employees involved in credit analysis and employees involved in business relationships with clients.

(10) New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. An issuance of bonds for the purpose of constructing teacher or student housing is eligible for the guarantee for new money only if it is an integral part of the educational mission of the school district as determined by the commissioner. Eligibility for the guarantee for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:

(A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or

(B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.

(11) Notes issued to provide interim financing--An issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the guarantee under this section, the notes must be:

(A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;

(B) approved by the attorney general or issued in accordance with proceedings that have been approved by the attorney general; and

(C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.

(12) Refunding issue--An issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the guarantee for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under the TEC, §45.003.

(13) Total debt service--Total outstanding principal and interest on bonded debt.

(A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.

(B) The total debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement, or if there is no official statement, debt service amounts based on the maximum rate permitted by the bond order or other bond proceeding that establishes a maximum interest rate for the bonds.

(c) Data sources.

(1) The following data sources will be used for purposes of prioritization:

(A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;

(B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;

(C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and

(D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.

(2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.

(d) Bond eligibility.

(1) Only those combination, new money, and refunding issues as defined in subsection (b)(7), (10), and (12), respectively, of this section are eligible to receive the guarantee.

(2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds, except that subparagraph (C) of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.

(A) As with any district applying for approval for the guarantee, the district issuing the refunding bonds must meet the requirements for initial approval specified in subsection (g)(2)(A) of this section.

(B) The bonds to be refunded must have been:

(i) previously guaranteed by the Permanent School Fund (PSF) or approved for credit enhancement under §61.1038 of this title (relating to School District Bond Enhancement Program);

(ii) issued on or after November 1, 2008, and before January 1, 2010; or

(iii) issued as notes to provide interim financing as defined in subsection (b)(11) of this section.

(C) The district must demonstrate that issuing the refunding bond(s) will result in a present value savings to the district and

that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.

(D) The refunding transaction must comply with the provisions of subsection (g)(4)(A)-(C) of this section.

(3) If a district files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the applicant district must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.

(e) Determination of PSF capacity to guarantee bonds.

(1) Each month the commissioner will estimate the available capacity of the PSF. If necessary, the commissioner will confirm that the PSF has sufficient capacity to guarantee the bonds before the issuance of the final approval for the guarantee in accordance with subsection (g)(3) of this section. The calculation of capacity will be based on a multiplier of three and one-fourth times the cost value of the PSF. The commissioner may reduce the multiplier to maintain the AAA credit rating of the PSF. Changes to the multiplier made by the commissioner are to be ratified or rejected by the State Board of Education (SBOE) at the next meeting for which the item can be posted.

(2) The SBOE will establish an amount of capacity to be held in reserve of no less than 5.0% of the fund's capacity. The reserved capacity can be used to award guarantees for districts that experience unforeseen catastrophes or emergencies that require the renovation or replacement of school facilities as described in the TEC, §44.031(h). The amount to be held in reserve may be increased by a majority vote of the SBOE based on changes in the asset allocation and risk in the portfolio and unrealized gains in the portfolio, or by the commissioner as necessary to prudently manage fund capacity. Changes to the amount held in reserve made by the commissioner are to be ratified or rejected by the SBOE at the next meeting for which the item can be posted.

(3) The net capacity of the PSF to guarantee bonds is determined by subtracting the amount to be held in reserve, as determined under paragraph (2) of this subsection, from the total available capacity, as described in paragraph (1) of this subsection.

(f) Application process and application processing.

(1) Application submission and fee. A district must apply to the commissioner for the guarantee of eligible bonds or the credit enhancement of eligible bonds as authorized under §61.1038 of this title by submitting an application electronically through the website of the MAC of Texas or its successor. The district must submit the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The district may not

submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

(A) The application fee is \$1,500.

(B) The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by the TEA.

(C) The fee will not be refunded to a district that:

(i) is not approved for the guarantee or the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.

(D) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.

(2) Application prioritization and processing. Applications will be prioritized based on districts' property wealth per ADA, with the application of a district with a lower property wealth per ADA prioritized before that of a district with a higher property wealth per ADA. All applications received during a calendar month will be held until up to the 15th business day of the subsequent month. On or before the 15th business day of each month, the commissioner will announce the results of the prioritization and process applications for initial approval for the guarantee, up to the available net capacity as of the application deadline, subject to the requirements of this section.

(A) Approval for guarantees will be awarded each month beginning with the districts with the lowest property wealth per ADA until the PSF reaches its net capacity to guarantee bonds.

(B) Approval for guarantees will be awarded based on the fund's capacity to fully guarantee the bond issue for which the guarantee is sought. Applications for bond issues that cannot be fully guaranteed will not receive an award. The amount of bond issue for which the guarantee was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee during the award process. If PSF net capacity has been exhausted, the commissioner will process the application for approval of the credit enhancement as specified in §61.1038 of this title.

(C) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (g) of this section.

(D) An applicant school district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(9) of this section is the same as or higher than that of the PSF.

(3) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(4) Notice of application status. Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline.

(5) Reapplication. If a district does not receive approval for the guarantee or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (g)(4) of this section, the district may reapply in a subsequent month.

Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months.

(g) Approval for the guarantee; district responsibilities on receipt of approval.

(1) Initial and final approval provisions.

(A) If, during the monthly estimation of PSF capacity described in subsection (e)(1) of this section, the commissioner determines that the available capacity of the PSF is 10% or less, the commissioner may require an applicant school district to obtain final approval for the guarantee as described in paragraph (3) of this subsection.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (2) of this subsection as both the initial and final approval; and

(ii) an applicant school district that has received notification of initial approval for the guarantee, as described in paragraph (2) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(2) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for initial approval by the commissioner. The commissioner's review will include the following:

(i) the purpose of the bond issue;

(ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:

(I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the guarantee;

(II) if the district's accreditation status is Accredited-Warning or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the guarantee; or

(III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the guarantee;

(iii) the district's compliance with statutes and rules of the TEA; and

(iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §45.0031 and §45.005.

(B) The following limitation applies to applications for new money issues of bonds for which the election authorizing the issuance of the bonds was called after July 15, 2004. The commissioner will limit approval for the guarantee to a district that has, at the time of the application for the guarantee, less than 90% of the annual debt service of the district with the highest annual debt service per ADA, as

determined by the commissioner annually, or less than 90% of the total debt service of the district with the highest total debt service per ADA, as determined by the commissioner annually. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(8) of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by subsection (b)(1) of this section. The total debt service amount is the amount defined by subsection (b)(13) of this section.

(C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant district whose application has received initial approval for the guarantee written notice of initial approval.

(3) Final approval. The provisions of this paragraph apply only as described in paragraph (1) of this subsection. A district must receive final approval before completing the sale of the bonds for which the district has received notification of initial approval.

(A) A district that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the school board of trustees no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the board to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the school board of trustees or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the district expects to complete the sale by official action of the board or of a pricing officer or committee.

(C) The TEA will process requests for final approval from districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A district may provide written notification as required by this paragraph by facsimile transmission or by email in a manner prescribed by the commissioner.

(4) District responsibilities on receipt of approval.

(A) Once a district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval

for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the district or the attorney general before the expiration of the 180-day period.

(B) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee, the commissioner will consider the application withdrawn, and the district must reapply for a guarantee.

(C) If applicable, the district must comply with the provisions for final approval described in paragraph (3) of this subsection to maintain approval for the guarantee.

(D) A district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.

(h) Financial exigency. The following provisions describe how a declaration of financial exigency under §109.2001 of this title (relating to Financial Exigency) affects a district's application for guarantee approval or a district's previously granted approval.

(1) Application for guarantee of new money issue. The commissioner will deny approval of an application for the guarantee of a new money issue if the applicant school district has declared a state of financial exigency for the district's current fiscal year. The denial of approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.

(2) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the guarantee of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and may not offer the bonds for sale unless the commissioner determines that the district may proceed.

(3) Application for guarantee of refunding issue. The commissioner will consider an application for the guarantee of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.

(i) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the SBOE to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(j) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond order. If bonds guaranteed by the BGP are defeased, the district must notify the commissioner in writing within ten calendar days of the action.

(k) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds must certify that, on the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the prin-



principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.

(l) Bonds guaranteed before December 1, 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent solely from the PSF and not from the ASF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, excluding payments from the ASF.

(m) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district's paying agent from the PSF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the first state money payable to the district, regardless of source, including the ASF.

(n) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with the terms of the bond order. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(o) Guarantee restrictions. The guarantee provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond order provision requiring an interest rate change. The guarantee does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(p) Notice of default. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before maturity date, notify the commissioner.

(q) Payment from PSF.

(1) Immediately after the commissioner receives the notice described in subsection (p) of this section, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the PSF.

(3) Following full reimbursement to the PSF with interest, the comptroller will further cancel the bond or coupon and forward

it to the school district for which payment was made. Interest will be charged at the rate determined under the Texas Government Code, §2251.025(b). Interest will accrue as specified in the Texas Government Code, §2251.025(a) and (c).

(r) Bonds not accelerated on default. If a school district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the school district's default.

(s) Reimbursement of PSF. If payment from the PSF is made on behalf of a school district, the school district must reimburse the amount of the payment, plus interest, in accordance with the requirements of the TEC, §45.061.

(t) Repeated failure to pay. If a total of two or more payments are made under the BGP or the credit enhancement program authorized under §61.1038 of this title on the bonds of a school district, the commissioner will take action in accordance with the provisions of the TEC, §45.062.

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

Filed with the Office of the Secretary of State on September 29, 2015.

TRD-201504050  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Effective date: August 22, 2016  
Proposal publication date: August 7, 2015  
For further information, please call: (512) 475-1497



### 19 TAC §33.67

The State Board of Education (SBOE) adopts amendment to §33.67, concerning the guarantee program for charter school bonds. The amendment is adopted with changes to the proposed text as published in the August 7, 2015 issue of the *Texas Register* (40 TexReg 4986). The section establishes provisions for the administration of the bond guarantee program. The adopted amendment modifies the definition of *nationally recognized investment rating firm* and allows, under certain conditions, student and teacher housing as projects eligible for a guarantee under the definition of *new money issue*. The adopted amendment also requires the commissioner to maintain a 5.0% reserve so that charter school guarantees do not exceed capacity as the value of the fund changes and new guarantees in process are issued. In addition, the adopted amendment specifies additional requirements for a charter district relating to the fulfillment of debt obligations.

REASONED JUSTIFICATION. Section 33.67 is the rule the SBOE adopted to implement the Permanent School Fund (PSF) Bond Guarantee Program for Charter Schools. The rule sets out the statutory provisions for the Bond Guarantee Program for Charter Schools, provides definitions, explains bond eligibility requirements, and describes how PSF capacity to guarantee bonds is determined. The rule also establishes the requirements of and policies related to the program's application and approval process. In addition, the rule allows for the commissioner to allocate specific holdings of the PSF under certain conditions,

explains what effect defeasance has on guaranteed bonds, and sets out specific program payment conditions and guarantee restrictions.

The adopted amendment to 19 TAC §33.67 updates the rule as follows.

Section 33.67 defines *nationally recognized investment rating firm* for the purpose of administering the Texas Education Code (TEC), §45.0541, which requires a charter district to receive an investment grade rating from a nationally recognized statistical rating organization (NRSRO) to be eligible for the guarantee. The current definition in subsection (b)(16) of a *nationally recognized investment rating firm* expired on September 1, 2015. The board requested that the agency develop a request for qualifications (RFQ) to select NRSROs that are eligible for use. This adoption amends the bond guarantee program rule for charter schools to reference the qualifications that the agency developed during the RFQ process. This adoption also adds new language in subsection (e)(2)(A)(vii) to require that charters must not have violated a covenant relating to debt obligation in the immediately preceding three years to be eligible for the guarantee. At proposal, the language referred to a financial obligation. At adoption, however, in response to public comment, the SBOE revised the language to refer to debt obligation for clarification.

The definition in subsection (b)(17)(A) of a *new money issue* that is eligible for a guarantee did not explicitly exclude student and teacher housing from the projects that can be guaranteed. At proposal, the amendment excluded these projects from being eligible for a guarantee. At adoption, however, in response to public comments, the SBOE took action to allow, under certain conditions, student or teacher housing, consistent with a change to the bond guarantee rule for school districts. Charter district bond eligibility requires bonds to be issued in accordance with the TEC, Chapter 53, which limits bonds that may be issued to educational facilities.

The adoption also adds language in subsection (d)(1) to require the commissioner to maintain a 5.0% reserve when issuing charter school guarantees to prevent fluctuations in the value of the fund and new money issuances from causing the charter school guaranteed debt to exceed charter school capacity. The adopted language prevents charter school guarantees from exceeding capacity as the value of the fund changes and new guarantees in process are issued. Statute authorizes the board to set limitations on the amount of bonds that may be granted in addition to the limits that result from the multiplier established by the board.

Subsequent to the July 2015 SBOE meeting, as directed by the Committee on School Finance/Permanent School Fund, staff gathered input regarding the prohibition against using the Bond Guarantee Program to guarantee bonds to construct student and teacher housing, the prohibition of violating a covenant related to a financial obligation, and the requirement for a 5.0% reserve. Staff provided the committee with the results of the input at its September 2015 meeting, and the SBOE took action to approve changes to subsections (b)(17)(A) and (e)(2)(A)(vii) at adoption to incorporate the input.

The amendment to 19 TAC §33.67 was approved by the SBOE for first reading and filing authorization at its July 17, 2015 meeting and for second reading and final adoption at its September 11, 2015 meeting.

In accordance with the TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to

specify an effective date earlier than the beginning of the 2016-2017 school year in order to implement the latest policy in a timely manner.

**SUMMARY OF COMMENTS AND RESPONSES.** Following is a summary of the public comments received and the corresponding responses regarding proposed amendment to 19 TAC §33.67.

**Comment.** Concerning §33.67(b)(17), the Texas Charter Schools Association recommended striking prohibition against guaranteed bonds being used for student or teacher housing. A bond counsel recommended modification of proposed language to ensure that any bonds to be used for student or teacher housing be contemplated in the charter or charter application and be an essential or integral part of the educational program.

**Response.** The SBOE agrees and revised §33.67(b)(17)(A) at adoption to remove the prohibition on student and teacher housing and to add allowance for student and teacher housing when it is contemplated in the charter or charter application and is an integral part of the educational program. The SBOE also made a corresponding revision to §33.65(b)(10) to remove the prohibition on student and teacher housing when it is an integral part of the educational mission of the school district.

**Comment.** Concerning §33.67(d), the Texas Charter Schools Association and a bond counsel recommended striking the requirement that the commissioner hold 5.0% of the charter school available capacity in reserve each month due to concerns that the charter reserve duplicates an existing reserve on the calculation of overall available capacity.

**Response.** The SBOE disagrees. After working with the Texas Charter Schools Association and bond counsel, the agency was unable to construct an alternative methodology that would avoid the concerns raised but that would still prevent the agency from guaranteeing more than the statutorily calculated limit for charter guarantees as the value of the calculated overall limit changes from month to month.

**Comment.** Concerning §33.67(e), the Texas Charter Schools Association recommended striking the requirement that a charter not have violated a covenant relating to a financial obligation in the immediately preceding three years. A bond counsel recommended modifying the requirement such that a charter must not have violated a covenant related to the payment of a financial obligation in the immediately preceding three years due to concerns that the proposed language was overly broad.

**Response.** The SBOE agrees in part and modified §33.67(e)(2)(A)(vii) at adoption to require that a charter not have materially violated a covenant related to debt obligation in the immediately preceding three years.

**Comment.** Concerning §33.67(f)(5), the Texas Charter Schools Association and a bond counsel recommended striking language requiring a charter district to classify all property purchased or improved with bond proceeds serviced with state funds as state property in the annual financial report.

**Response.** The SBOE provides the following clarification. The language addressed by the commenters was part of the proposal that was considered by the Committee on School Finance/Permanent School Fund at its July 2015 meeting; however, the committee removed this language. The proposal approved by the SBOE for first reading and filing authorization did not include this requirement.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under the TEC, Chapter 45, Subchapter C; TEC, §12.135, which authorizes the designation of a charter holder as a charter district, including the requirement that an open-enrollment charter school have an investment grade credit rating as specified in statute. The section authorizes a charter district to apply for bonds issued under TEC, Chapter 53, for the open-enrollment charter school, including refunding and refinanced bonds, to be guaranteed by the Permanent School Fund as provided by TEC, Chapter 45; TEC, §45.051, which sets forth definitions for the guaranteed bond program, including the definition of charter district; TEC, §45.0531, which authorizes the SBOE to adopt rules to establish a percentage of the cost value of the Permanent School Fund to be reserved from use in guaranteeing bonds under the TEC, Chapter 45, Subchapter C; TEC, §45.0532, which authorizes the SBOE to establish the limitation on the amount of charter district bond guarantees; TEC, §45.0541, which establishes criteria for eligibility of charter district bonds, which includes being rated as investment grade by a nationally recognized investment rating firm; TEC, §45.056, which requires the SBOE to conduct an investigation of a school district or charter school to determine whether the district or charter should qualify for a bond guarantee; TEC, §45.063, which authorizes the SBOE to adopt rules necessary for the administration of the bond guarantee program; and the Texas Constitution, Article VII, Section 5, which authorizes the bond guarantee program.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§7.102(c)(33), 12.135, 45.051, 45.0531, 45.0532, 45.0541, 45.056, 45.063, and the Texas Constitution, Article VII, Section 5.

§33.67. *Bond Guarantee Program for Charter Schools.*

(a) Statutory provision. The commissioner of education must administer the guarantee program for open-enrollment charter school bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter C.

(b) Definitions. The following definitions apply to the guarantee program for open-enrollment charter school bonds.

(1) Amortization expense--The annual expense of any debt and/or loan obligations.

(2) Annual debt service--Payments of principal and non-capitalized interest on outstanding bonded debt scheduled to occur during a charter district's fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the charter district is responsible for outstanding bonded indebtedness.

(A) The annual debt service will be determined by the current report of the bonded indebtedness of the charter district as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the final official statement or, if there is no official statement, debt service amounts based on the maximum rate permitted by the bond resolution or other bond proceeding that establishes a maximum interest rate for the bonds.

(C) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC)

§54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter district.

(3) Application deadline--The last business day of the month in which an application for a guarantee is filed. Applications must be submitted electronically through the website of the MAC of Texas or its successor by 5:00 p.m. on the last business day of the month to be considered in that month's application processing. This application deadline does not apply to applications for issues to refund bonds previously guaranteed by the Bond Guarantee Program.

(4) Board resolution--The resolution adopted by the governing body of an open-enrollment charter holder that:

(A) requests guarantee of bonds through the Bond Guarantee Program; and

(B) authorizes the charter holder's administration to pursue bond financing.

(5) Bond--A debt security issuance approved by the attorney general, issued under the TEC, Chapter 53, to provide long-term financing with a maturity schedule of at least three years.

(6) Bond Guarantee Program (BGP)--The guarantee program that is described by this section and established under the TEC, Chapter 45, Subchapter C.

(7) Bond resolution--The resolution, indenture, or other instrument adopted by the governing body of an issuer of bonds authorizing the issuance of bonds for the benefit of a charter district.

(8) Charter district--An open-enrollment charter holder designated as a charter district under subsection (e) of this section, as authorized by the TEC, §12.135.

(9) Combination issue--An issuance of bonds for which an application for a guarantee is filed that includes both a new money portion and a refunding portion, as permitted by the TEC, Chapter 53. The eligibility of combination issues for the guarantee is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(10) Debt service coverage ratio--A measure of a charter district's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by annual debt service. The calculation can be expressed as: (Excess of revenues over expenses + interest expense + depreciation expense + amortization expense)/ annual debt service.

(11) Depreciation expense--The audited amount of depreciation that was expensed during the fiscal period.

(12) Educational facility--A classroom building, laboratory, science building, faculty or administrative office building, or other facility used exclusively for the conduct of the educational and administrative functions of a charter school.

(13) 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 the state of Texas.

(14) Long-term debt--Any debt of the charter district that has a term of greater than three years and is secured on a parity basis with the bonds to be guaranteed.

(15) Maximum annual debt service--As of any date of calculation, the highest annual debt service requirements with respect to all outstanding long-term debt for any succeeding fiscal year.

(16) Nationally recognized investment rating firm--An investment rating firm that is designated by the United States Securities and Exchange Commission as a nationally recognized statistical rating organization (NRSRO) and is demonstrating that it has:

(A) had its current NRSRO designation for at least three consecutive years;

(B) provided credit ratings to each of the following:

(i) fifteen or more fixed income securities denominated in United States dollars and issued during the immediately preceding three years;

(ii) ten or more school districts in the United States;

(iii) one or more charter schools in the United States;

and

(C) a documented separation of duties between employees involved in credit analysis and employees involved in business relationships with clients.

(17) New money issue--An issuance of revenue bonds under the TEC, Chapter 53, for the purposes of:

(A) the acquisition, construction, repair, or renovation of an educational facility of an open-enrollment charter school and equipping real property of an open-enrollment charter school, provided that any bonds for student or teacher housing must meet the following criteria:

(i) the proposed housing is contemplated in the charter or charter application; and

(ii) the proposed housing is an essential and integral part of the educational program included in the charter contract; or

(B) the refinancing of one or more promissory notes executed by an open-enrollment charter school, each in an amount in excess of \$500,000, that evidence one or more loans from a national or regional bank, nonprofit corporation, or foundation that customarily makes loans to charter schools, the proceeds of which loans were used for a purpose described in subparagraph (A) of this paragraph; or

(C) both.

(18) Open-enrollment charter--This term has the meaning assigned in §100.1001 of this title (relating to Definitions).

(19) Open-enrollment charter holder--This term has the meaning assigned to the term "charter holder" in the TEC, §12.1012.

(20) Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1001 of this title.

(21) Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1001 of this title.

(22) Refunding issue--An issuance of bonds under the TEC, Chapter 53, for the purpose of refunding:

(A) bonds that have previously been issued under that chapter and have previously been approved by the attorney general; or

(B) bonds that have previously been issued for the benefit of an open-enrollment charter school under Vernon's Civil Statutes,

Article 1528m, and have previously been approved by the attorney general.

(c) Bond eligibility.

(1) Only those combination, new money, and refunding issues as defined in subsection (b)(9), (17), and (22), respectively, of this section are eligible to receive the guarantee. The bonds must, without the guarantee, be rated as investment grade by a nationally recognized investment rating firm and must be issued on or after September 28, 2011.

(2) Refunding issues must comply with the following requirements to retain eligibility for the guarantee for the refunding bonds.

(A) As with any open-enrollment charter holder applying for approval for the guarantee, the charter holder for which the refunding bonds are being issued must meet the requirements for charter district designation specified in subsection (e)(2) of this section and the requirements for initial approval specified in subsection (f)(3)(A) of this section.

(B) The charter holder must demonstrate that issuing the refunding bond(s) will result in a present value savings to the charter holder. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds. If the commissioner approves refunding bonds for the guarantee based on evidence of present value savings but at the time of the sale of the refunding bonds a present value savings is not realized, the commissioner may revoke the approval of the bonds for the guarantee.

(C) For issues that refund bonds previously guaranteed by the BGP, the charter holder must demonstrate that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded.

(D) The refunding transaction must comply with the provisions of subsection (f)(5)(A)-(C) and (E) of this section.

(3) If an open-enrollment charter holder files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this section. As part of its application, the charter holder making the application must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.

(d) Determination of Permanent School Fund (PSF) capacity to guarantee bonds for charter districts.

(1) Each month the commissioner will estimate the available capacity of the PSF to guarantee bonds for charter districts. This capacity is determined by taking the net capacity determined under §33.65 of this title (relating to Bond Guarantee Program for School Districts), subtracting the total amount of outstanding guaranteed bonds, and then determining the percentage of the difference that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commis-

sioner. The commissioner's determination of the number of students enrolled in open-enrollment charter schools in this state and the number of students enrolled in all public schools in this state is based on the enrollment data submitted by school districts and charter schools to the Public Education Information Management System (PEIMS) during the most recent fall PEIMS submission. Annually, the commissioner will post the applicable student enrollment numbers and the percentage of students enrolled in open-enrollment charter schools on the Texas Education Agency (TEA) web page related to the BGP. The commissioner shall hold 5.0% of the charter school available capacity in reserve each month.

(2) Up to half of the total capacity of the PSF to guarantee bonds for charter districts may be used to guarantee charter district refunding bonds.

(e) Application process and application processing. An open-enrollment charter holder must apply to the commissioner for the guarantee of eligible bonds by submitting an application electronically through the website of the MAC of Texas or its successor. Before an application for the guarantee will be considered, a charter holder must first be determined by the commissioner to meet criteria for designation as a charter district for purposes of this section. The application submitted through the website of the MAC of Texas or its successor will serve as both a charter holder's application for designation as a charter district and its application for the guarantee.

(1) Application submission and fee. As part of its application, an open-enrollment charter holder must submit the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The open-enrollment charter holder may not submit an application for a guarantee before the governing body of the charter holder adopts a board resolution as defined in subsection (b)(4) of this section.

(A) The amount of the application fee is the amount specified in §33.65 of this title.

(B) The fee is due at the time the application for charter district designation and the guarantee is submitted. An application will not be processed until the fee has been remitted according to the directions provided on the website of the MAC of Texas or its successor and received by the TEA.

(C) The fee will not be refunded to an applicant that:

(i) is designated a charter district but is not approved for the guarantee; or

(ii) receives approval for the guarantee but does not sell its bonds before the expiration of its approval for the guarantee.

(D) The fee may be transferred to a subsequent application for the guarantee by a charter district that has been approved for the guarantee if the charter district withdraws its application and submits the subsequent application before the expiration of its approval for the guarantee.

(2) Eligibility to be designated a charter district.

(A) To be designated a charter district and have its application for the guarantee considered by the commissioner, an open-enrollment charter holder must:

(i) have operated at least one open-enrollment charter school in the state of Texas for at least three years and have had students enrolled in the school for those three years;

(ii) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;

(iii) in its application, agree that the bonded indebtedness for which the guarantee is sought will be undertaken as an obligation of all entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness, provided that an entity that does not operate a charter school in Texas is subject to this subparagraph only to the extent that it has received state funds from the open-enrollment charter holder;

(iv) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps, as determined by the commissioner, to begin resolving the action;

(v) have had, for the past three years, an audit as required by §100.1047 of this title (relating to Accounting for State and Federal Funds) that was completed with unqualified or unmodified opinions;

(vi) have received an investment grade credit rating from a nationally recognized investment rating firm as defined in subsection (b)(16) of this section as specified by the TEC, §45.0541, within the last year; and

(vii) not have materially violated a covenant relating to debt obligation in the immediately preceding three years.

(B) For an open-enrollment charter holder to be designated a charter district and have its application for the guarantee considered by the commissioner, each open-enrollment charter school operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have a rating of met standard or met alternative standard as its most recent state academic accountability rating. However, if an open-enrollment charter school operated under the charter is not yet rated because the school is in its first year of operation, that fact will not impact the charter holder's eligibility to be designated a charter district and apply for the guarantee.

(3) Application processing. All applications received during a calendar month that were submitted by open-enrollment charter holders determined to meet the criteria in paragraph (2) of this subsection will be held until the 15th business day of the subsequent month. On the 15th business day of each month, the commissioner will announce the results of the pro rata allocation of available capacity, if pro rata allocation is necessary, and process applications for initial approval for the guarantee, up to the available capacity as of the application deadline, subject to the requirements of this section.

(A) If the available capacity is insufficient to guarantee the total value of the bonds for all applicant charter districts, the commissioner will allocate the available capacity on a pro rata basis to each applicant charter district. For each applicant, the commissioner will determine the percentage of the total amount of all applicants' proposed bonds that the applicant's proposed bonds represent. The commissioner will then allocate to that applicant the same percentage of the available capacity, but in no event will an allocation be equal to an amount less than \$500,000.

(B) The actual guarantee of the bonds is subject to the approval process prescribed in subsection (f) of this section.

(C) An applicant charter district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(16) of this section is the same as or higher than that of the PSF.

(4) Late application. An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.

(5) Notice of application status. Each open-enrollment charter holder that submits a valid application will be notified of the application status within 15 business days of the application deadline.

(6) Reapplication. If an open-enrollment charter holder does not receive designation as a charter district, does not receive approval for the guarantee, or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (f)(5) of this section, the charter holder may reapply in a subsequent month. An application that was denied approval for the guarantee or that was submitted by a charter holder that the commissioner determined did not meet the criteria for charter district designation will not be retained for consideration in subsequent months. A reapplication fee will be required unless the conditions described in subsection (e)(1)(D) of this section apply to the charter holder.

(f) Approval for the guarantee; charter district responsibilities on receipt of approval.

(1) Approval for the guarantee and charter renewal or amendment.

(A) If an open-enrollment charter holder applies for the guarantee within the 12 months before the charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the guarantee may not be issued before the successful renewal of the charter.

(B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the guarantee for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.

(2) Initial and final approval provisions.

(A) The commissioner may require an applicant charter district to obtain final approval for the guarantee as described in paragraph (4) of this subsection if:

(i) during the monthly estimation of PSF capacity described in §33.65 of this title, the commissioner determines that the available capacity of the PSF as described in §33.65 of this title is 10% or less; or

(ii) during the monthly estimation of the available capacity of the PSF to guarantee bonds for charter districts described in subsection (d) of this section, the commissioner determines that the available capacity of the PSF to guarantee bonds for charter districts is 10% or less.

(B) If the commissioner has not made such a determination:

(i) the commissioner will consider the initial approval described in paragraph (3) of this subsection as both the initial and final approval; and

(ii) an applicant charter district that has received notification of initial approval for the guarantee, as described in paragraph (3) of this subsection, may consider that notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(3) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under the TEC, §45.056, the commissioner will investigate the financial status of the applicant charter district and the accreditation status of all open-enrollment charter schools operated under the charter. For the charter district's application to be eligible for initial approval by the commissioner, each open-enrollment charter school operated under the charter must be accredited, and the charter district must be financially sound. The commissioner's review will include review of the following:

(i) the purpose of the bond issue;

(ii) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following, except that, if an open-enrollment charter school operated under the charter has not yet received an accreditation rating because it is in its first year of operation, that fact will not impact the charter district's eligibility for consideration for the guarantee:

(I) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the charter district will be eligible for consideration for the guarantee;

(II) if the accreditation status of any open-enrollment charter school operated under the charter is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the charter district will not be eligible for consideration for the guarantee; or

(III) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Revoked, the charter district will not be eligible for consideration for the guarantee;

(iii) the charter district's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the attorney general under the provisions of the TEC, §53.40;

(iv) whether the TEA has required the charter district to submit a financial plan under §109.1101 of this title (relating to Financial Solvency Review) in the last three years;

(v) the audit history of the charter district and of all open-enrollment charter schools operated under the charter;

(vi) the charter district's compliance with statutes and rules of the TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;

(vii) any interventions and sanctions to which the charter district has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;

(viii) formal complaints received by the TEA that have been made against the charter district, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;

(ix) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the campus ratings of all open-enrollment charter school campuses operated under the charter;

(x) any unresolved corrective actions that are less than one year old; and

(xi) whether the charter district is considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation.

(B) The commissioner will limit approval for the guarantee to a charter district with a historical debt service coverage ratio, based on annual debt service, of at least 1.1 for the most recently completed fiscal year and a projected debt service coverage ratio, based on projected revenues and expenses and maximum annual debt service, of at least 1.2. If the bond issuance for which an application has been submitted is the charter district's first bond issuance, the commissioner will evaluate only projected debt service coverage. Projections of revenues and expenses are subject to approval by the commissioner.

(C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant charter district whose application has received initial approval for the guarantee written notice of initial approval.

(4) Final approval. The provisions of this paragraph apply only as described in paragraph (2) of this subsection. A charter district must receive final approval before completing the sale of the bonds for which the charter district has received notification of initial approval.

(A) A charter district that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the guarantee or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The charter district must receive written confirmation from the TEA that the capacity continues to be available and must continue to meet the requirements of subsection (e)(2) of this section before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) A charter district that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an item to approve the bond sale on the agenda of a meeting of the bond issuer's board of directors no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the issuer to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The charter district must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the bond issuer or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the bond issuer expects to complete the sale by official action of the bond issuer or of a pricing officer or committee.

(C) The TEA will process requests for final approval from charter districts that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) A charter district may provide written notification as required by this paragraph by facsimile transmission, by email, or in another manner prescribed by the commissioner.

(5) Charter district responsibilities on receipt of approval.

(A) Once a charter district is awarded initial approval for the guarantee, each issuance of the bonds must be approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee. The initial approval for the guarantee will expire at the end of the 180-day period. The commissioner may extend the 180-day period, based on extraordinary circumstances, on receiving a written request from the charter district or the attorney general before the expiration of the 180-day period.

(B) If applicable, the charter district must comply with the provisions for final approval described in paragraph (4) of this subsection to maintain approval for the guarantee.

(C) If the bonds are not approved by the attorney general within 180 days of the date of the letter granting the approval for the guarantee, the commissioner will consider the application withdrawn, and the charter district must reapply for a guarantee.

(D) A charter district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee.

(E) The charter district must provide evidence of the final investment grade rating of the bonds to the TEA after receiving initial approval but before the distribution of the preliminary official statement for the bonds or, if the bonds are offered in a private placement, before approval of the bond sale by the governing body of the charter district.

(F) A charter district must identify by legal description any educational facility purchased or improved with bond proceeds no later than 30 days after entering into a binding commitment to expend bond proceeds for that purpose. The charter district must identify at that time whether and to what extent debt service will be paid with any source of revenue other than state funds.

(g) Allocation of specific holdings. If necessary to successfully operate the BGP, the commissioner may allocate specific holdings of the PSF to specific bond issues guaranteed under this section. This allocation will not prejudice the right of the State Board of Education (SBOE) to dispose of the holdings according to law and requirements applicable to the fund; however, the SBOE will ensure that holdings of the PSF are available for a substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.

(h) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds guaranteed by the BGP are defeased, the charter district must notify the commissioner in writing within ten calendar days of the action.

(i) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter C, matured principal and interest payments are limited to amounts due on guaranteed bonds at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the bond

order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(j) **Guarantee restrictions.** The guarantee provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter C, is restricted to matured bond principal and interest. The guarantee applies to all matured interest on eligible bonds, whether the bonds were issued with a fixed or variable interest rate and whether the interest rate changes as a result of an interest reset provision or other bond resolution provision requiring an interest rate change. The guarantee does not extend to any obligation of a charter district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(k) **Notice of default.** A charter district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before the maturing or matured principal or interest becomes due, notify the commissioner.

(l) **Payment from Charter District Bond Guarantee Reserve Fund and PSF.**

(1) Immediately after the commissioner receives the notice described in subsection (k) of this section, the commissioner will notify the TEA division responsible for administering the PSF of the notice of default and instruct the comptroller to transfer from the Charter District Bond Guarantee Reserve Fund established under the TEC, §45.0571, to the charter district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(2) If money in the reserve fund is insufficient to pay the amount due on a bond under paragraph (1) of this subsection, the commissioner will instruct the comptroller to transfer from the appropriate account in the PSF to the charter district's paying agent the amount necessary to pay the balance of the unpaid maturing or matured principal or interest.

(3) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller will hold the canceled bond or coupon on behalf of the fund or funds from which payment was made.

(4) To ensure that the charter district reimburses the reserve fund and the PSF, if applicable, the commissioner will withhold from state funds otherwise payable to the charter district the amount that the charter district owes in reimbursement.

(5) Funds intercepted for reimbursement under paragraph (4) of this subsection will be used to fully reimburse the PSF before any funds reimburse the reserve fund. If the funds intercepted under paragraph (4) of this subsection are insufficient to fully reimburse the PSF with interest, subsequent payments into the reserve fund will first be applied to any outstanding obligation to the PSF.

(6) Following full reimbursement to the reserve fund and the PSF, if applicable, with interest, the comptroller will further cancel the bond or coupon and forward it to the charter district for which payment was made. Interest will be charged at the rate determined under the Texas Government Code (TGC), §2251.025(b). Interest will accrue as specified in the TGC, §2251.025(a) and (c). For purposes of this section, the "date the payment becomes overdue" that is referred

to in the TGC, §2251.025(a), is the date that the comptroller makes the payment to the charter district's paying agent.

(m) **Bonds not accelerated on default.** If a charter district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the charter district's default.

(n) **Reimbursement of Charter District Bond Guarantee Reserve Fund or PSF.** If payment from the Charter District Bond Guarantee Reserve Fund or the PSF is made on behalf of a charter district, the charter district must reimburse the amount of the payment, plus interest, in accordance with the requirements of the TEC, §45.061.

(o) **Repeated failure to pay.** If a total of two or more payments are made under the BGP on the bonds of a charter district, the commissioner may take action in accordance with the provisions of the TEC, §45.062.

(p) **Report on the use of funds and confirmation of use of funds by independent auditor.** A charter district that issues bonds approved for the guarantee must report to the TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The charter district's independent auditor must confirm in the charter district's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the guarantee.

(q) **Failure to comply with statute or this section.** An open-enrollment charter holder's failure to comply with the requirements of the TEC, Chapter 45, Subchapter C, or with the requirements of this section, including by making any material misrepresentations in the charter holder's application for charter district designation and the guarantee, constitutes a material violation of the open-enrollment charter holder's charter.

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

Filed with the Office of the Secretary of State on September 29, 2015.

TRD-201504051

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 19, 2015

Proposal publication date: August 7, 2015

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



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)**



## 25 TAC §§97.131 - 97.134, 97.139

*(Editor's Note: The Department of State Health Services filed the following notice of adoption for publication in the October 9, 2015, issue of the Texas Register. Due to a Texas Register staff error, the notice was omitted from the October 9 issue. The delayed date of publication does not change the effective date of the adopted rules.)*

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§97.131 - 97.134 and §97.139, concerning the reporting of sexually transmitted diseases (STDs), including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV), without changes to the proposed text as published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 2928) and, therefore, the sections will not be republished.

### BACKGROUND AND PURPOSE

The amendments update and clarify the disease reporting rules for STDs, including HIV and AIDS and make the disease reporting process more efficient in Texas. The amendments clarify reporting language, align the reporting rules with recent changes to the Centers for Disease Control and Prevention's (CDC) HIV surveillance case definition, and update language to reflect advancements in HIV testing technology. The amendments will improve the completeness and timeliness of STD reporting resulting in increased case ascertainment and earlier public health interventions to control the spread of STDs in Texas. The amendments also allow for better monitoring of the care and treatment programs for individuals at risk or infected with HIV and other STDs.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.131 - 97.134 and §97.139 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

### SECTION-BY-SECTION SUMMARY

Amendments to §97.131, Definitions, add new definitions numbered as (1) Acute HIV Infection, (3) Contract Research Organization, (4) Drug Resistance Testing, (5) Health Professional, (7) Nucleotide Sequence, (11) Stage of HIV Infection, and (12) Supplemental test. These new terms reflect new language found in the CDC's new case surveillance definition and advancements in diagnostic testing technologies, and are also used in subsequent sections of rule text.

Section 97.131(1) was renumbered as §97.131(2) to reflect the addition of new terms. Amendments to §97.131(2) delete the last sentence in the paragraph (regarding how to request the most current definition of AIDS and HIV infection from the department) as the department has not received any requests for the definition of HIV or AIDS under this rule in the last several years. In addition, when a current definition is needed, the department routinely references the current CDC definitions.

Section 97.131(2), confirmatory test, was deleted because advances in diagnostic testing technology have changed the terms associated with HIV and AIDS diagnostic testing, rendering the definition outdated.

Section 97.131(3), FASTA File, was deleted as the data format defined is no longer the exclusive format for submitting sequence

data to the department. Laboratories can use any electronic format for submitting sequence data.

Amendments to §97.131(4) - (7) renumber the terms as paragraphs (6) HIV-Exposed Infant, (8) Point of Care Tests, (9) Screening Test, and (10) Sexually Transmitted Disease (STD) to reflect the addition of new terms; reflect changes in testing practice settings and diagnostic testing technologies; and align terms with the CDC's new case surveillance definition.

Amendments to the introductory paragraph for §97.132 renumber this paragraph as subsection (a) and add language to cross-reference the general reporting requirements found in §97.1 in Subchapter A of Chapter 97, applicable to all communicable diseases. This ensures that all general reporting requirements are met in addition to the more specific reporting requirements pertaining to STD, including HIV and AIDS, addressed in Subchapter F.

Amendments to §97.132(1) replace the language "physician or dentist" with "health professional" which is a new term added under §97.131(5), Definitions. This change reflects a more inclusive term for all health professionals and allows for the deletion of the different health professions listed in existing §97.132(2) as all the professions are already listed under Health and Safety Code, §81.042 (relating to Persons Required to Report).

Amendments to §97.132(3) renumber this paragraph as subsection (a)(2) to reflect section reorganization and add language "contract research organization laboratory" as an example of other facilities that are required to report STDs to the department. This amendment reflects new facilities where testing is now taking place and clarifies that these facilities are required to report to the department.

Amendments to §97.132(4) renumber this paragraph as subsection (a)(3) to reflect section reorganization and delete the last sentence of this subsection as it is duplicative concerning reporting of patients who have an STD.

Section 97.132(5) was deleted as this type of facility is already listed in the enabling statute, Health and Safety Code, §81.042.

Amendments to §97.132(6) renumber this paragraph as subsection (b) to reflect section reorganization and clarify that failure to report is considered a crime under the Health and Safety Code, §81.049.

The amendments include new §97.132(c) which specifies that reporting to the department without authorization is allowed under the Health Insurance Portability and Accountability Act (HIPAA) for public health purposes where required by law and list the enabling federal regulations.

Amendments to the introductory paragraphs of §97.133 and §97.133(1) renumber the paragraphs as subsections (a) and (b) respectively and make minor changes to improve readability and clarity.

Amendments to §97.133(2) renumber this paragraph as subsection (c) and substitute new language to clarify that all persons required to report under §97.132 must report all data elements (listed subsequently as paragraphs (1) - (7)) and that the data elements must be reported either using the department's form or a substitute form as long as it captures all the data elements in the department's form.

Amendments to §97.133(2)(A) renumber this paragraph as subsection (c)(1) to reflect section reorganization; clarify the age range for reporting adolescent cases; and reflect new language

found in the CDC's new case surveillance definition. In addition, §97.133(2)(A) was divided into two paragraphs (1) and (2). The newly renumbered subsection (c)(2) adds clarity for reporting requirements for pediatric HIV infections and includes the CDC's new case surveillance definition which now identifies AIDS as stage 3 of HIV infection.

Amendments to §97.133(2)(B) renumber the paragraph as subsection (c)(3) to reflect section reorganization; and delete the language "women giving birth" and replace it with "all HIV-positive pregnant women" as all these infections are reportable as well. Also, a reference to an outdated form, Enhanced Perinatal HIV Surveillance form, was deleted and the currently used Texas HIV/AIDS Adult/Adolescent case report form was added.

New §97.133(c)(4) adds clarity by listing HIV-exposed infants in its own section and adds the currently used Texas HIV/AIDS Pediatric case report form.

Amendments to §97.133(2)(C) renumber the paragraph as subsection (c)(5) to reflect section reorganization; add the complete name of the disease *Neisseria gonorrhoea*; and delete the language "for adults and adolescents" as the form's title no longer includes these terms.

Amendments to §97.133(2)(D) renumber the paragraph as subsection (c)(6) to reflect section reorganization; delete the reference to the department's reporting form listed, and substitute it with the CDC's Congenital Syphilis Case Investigation and Report form that the department is now utilizing; and add a reference to §97.134 to be consistent with earlier paragraphs.

Amendments to §97.133(2)(E) renumber the paragraph as subsection (c)(7) to reflect section reorganization; insert the word "All" to clarify that all positive or reactive results need to be reported; and delete language that references adults, adolescents or infants as the form does not differentiate between these.

New §97.133(d) adds new language that reflects advances in diagnostic testing; aligns descriptions with the new CDC case surveillance definition; and §97.133(3) was removed and replaced with current terminology to improve readability and clarity.

Amendments to §97.133(3)(A) renumber the paragraph as subsection (d)(1) to reflect section reorganization; add a reference to the current version of the department's form used for reporting purposes; and delete language that limits reporting of CD4 results from adults and adolescents only as the CDC HIV surveillance case definition now uses CD4 results to stage HIV infections in children.

Amendments to §97.133(3)(B) renumber the paragraph as subsection (d)(2) to reflect section reorganization; add "suspected of HIV exposure" as a descriptor to the tests conducted on infants to clarify reporting of these infants' results; and add a reference to §97.134 to be consistent with earlier paragraphs.

Amendments to §97.133(3)(C) renumber the paragraph as subsection (d)(3) to reflect section reorganization; replace the text "confirmatory" with "supplemental" to reflect advances in testing technology and the new terms associated with those advancements; require that all HIV supplemental test results are reported so that acute HIV infections can be identified according to the new CDC HIV Surveillance case definition; and add a reference to §97.134 to be consistent with earlier paragraphs.

Amendments to §97.133(3)(D) renumber the paragraph as subsection (d)(4) to reflect section reorganization; add the word "All"

to clarify that all nucleotide sequence testing is to be reported; reorganize existing language to improve readability and clarity; and add a reference to §97.134 to be consistent with earlier paragraphs.

Amendments to §97.134(a) delete the language "case reports" and add "reportable information" to clarify that all information reported, not just case reports, is confidential; and add a reference to the state law that protects the confidentiality of the reported information.

Amendments to §97.134(b) reorganize existing language to improve readability and clarity; replace the language "physicians" with "health professionals" to reflect new terms amended in the definition section (§97.131); and add a website as a resource tool for further clarification on identifying the proper reporting location if needed.

Section 97.134(c) was deleted as amendments to subsection (b) will clarify how to identify the appropriate reporting location.

Amendments to §97.134(d) renumber the subsection as (c) to reflect section reorganization; add language to improve readability and clarity and reflect currently used terms; add a revised website as a resource tool for further clarification on identifying the proper reporting location if needed; and delete language to remove duplicative information and reflect current practices.

Amendments to §97.134(e) renumber the subsection as (d) to reflect section reorganization; replace the term "Physicians" with "Health Professionals" to reflect new terms amended in the definition section (§97.131); update references to newly amended sections within these rules; change the reporting requirement from seven calendar days to one day when reporting acute HIV infections by health professionals to allow the department to take appropriate public health action as early as possible as acute infections are the most infectious; and reorganize language to improve readability and clarity.

Amendments to §97.134(f) renumber the subsection as (e) to reflect section reorganization; update references to newly amended sections within these rules; add language to differentiate between reportable and non-reportable test results; and add language to improve readability and clarity and reflect currently used terms.

Amendments to §97.134(g) renumber the subsection as (f) to reflect section reorganization; add language to improve readability and clarity; add language to clarify that local health authorities will forward all STD test results (including AIDS) received by them to the department each week; and delete language that describes processes no longer used by the department, such as reporting information, or are covered in another section.

New §97.134(g) adds new language to reflect department security and confidentiality requirements for reportable information and reflect current practices for submitting electronic and paper reports.

Amendments to §97.134(h) and (i) delete language that describes processes concerning reporting of information that are no longer used by the department.

Amendments to §97.139 reflect recent changes in the name of the department and the branch, reflect changes to the program's mailing address, and add a reference to the enabling statute in the Texas Insurance Code, §545.055.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The amendments are authorized by the Health and Safety Code, Subtitle D, Chapter 81, Subchapter C, §§81.041 - 81.044, which grants the Texas Board of Health authority to identify each communicable disease or health condition that shall be reported under Chapter 81, authority to maintain and revise as necessary the list of reportable diseases, and authority to require reporting of HIV and AIDS. The amendments are also authorized by the other statutory citations listed in the individual sections herein. The amendments are also authorized by the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on September 24, 2015.

TRD-201503979

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: October 14, 2015

Proposal publication date: May 29, 2015

For further information, please call: (512) 776-6972



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

#### SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

#### 31 TAC §§65.318, 65.320, 65.321

The Texas Parks and Wildlife Commission (Commission) in a duly noticed meeting on August 20, 2015, adopted amendments to §§65.318, 65.320, and 65.321, concerning the Migratory Game Bird Proclamation. Section 65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, is adopted with changes to the proposed text as published in the May 22, 2015, issue of the *Texas Register* (40 TexReg 2736).

Section 65.320, concerning Extended Falconry Season--Late Season Species, and §65.321, concerning Special Management Provisions, are adopted without changes and will not be republished. The proposed text published in the May 22, 2015, issue of the *Texas Register* also included amendments to §65.315 and §65.319, which address early-season species of migratory game birds (dove, rails, gallinules, snipe, woodcock, early Canada goose, and teal). Those sections were adopted in the August 14, 2015, issue of the *Texas Register* (40 TexReg 5156).

The change to §65.318 increases the bag limit for canvasback ducks from one duck to two ducks.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Commission under Parks and Wildlife Code, Chapter 64, Subchapter C. Parks and Wildlife Code, §64.022, authorizes the Commission to delegate rulemaking authority to the Executive Director. Department regulations (31 TAC §65.313(f)) authorize the Executive Director, after notification of the Chairman of the Commission, to engage in rulemaking.

The amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, retains the basic season structure and bag limits from last year and adjusts the season dates to account for calendar shift, with the exception of the season length for white-fronted geese and bag limits for Canada geese in the Eastern Zone, the bag limit for dark geese in the Western Zone, the season structure for ducks in the North Zone, and the season structure for sandhill cranes in Zone C.

#### White-fronted Geese

With respect to white-fronted geese in the Eastern Zone, the Service has increased the number of hunting days available for white-fronted geese, from 72 days to 86. In keeping with the Commission policy to adopt the most liberal provisions possible under the federal frameworks (consistent with sound biological principles) the department adopts an opening date for white-fronted geese that is one week later than last year, adding the additional available days to the end of the season and resulting in a season running from November 7 to January 31.

#### Canada Geese

With respect to Canada geese in the Eastern Zone, the department adopts an increase in the bag limit from three to five. The department believes that an increase in the bag limit for Canada geese will provide additional hunting.

#### Dark Geese

With respect for bag limits for white-fronted geese, the management plan for white-fronted geese recommends an increase in the bag limit in the Western Zone, from one white-fronted goose to two white-fronted geese. In keeping with the Commission policy to adopt the most liberal provisions possible under the federal frameworks (consistent with sound biological principles) the department adopts the increased bag limits for geese accordingly.

#### Ducks

With respect to ducks, the amendment as adopted retains the season structure from last year for the South Duck Zone, ad-

justed for calendar shift. The amendment also alters the North Zone duck season to open one week later compared to last year. The amendment takes a different approach to providing additional opportunity for hunters than in years past. The split will be concurrent but the two zones will have different opening and closing dates (one week different for both) thereby adding a total of two weeks of opportunity for hunters wishing to hunt across zones.

#### Sandhill Cranes

The amendment as adopted also opens the season for sandhill cranes in Zone C one week earlier compared to last year. The intent of the amendment is to create more hunting opportunity by setting the sandhill crane season in Zone C to close concurrently with the duck season.

The amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates to reflect calendar shift.

The amendment to §65.321, concerning Special Management Provisions, adjusts the dates for the conservation season on light geese to account for calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service.

#### Ducks, Coots, and Mergansers

The department received 22 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for ducks, coots, and mergansers. Nineteen of the commenters articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the bag limit for mallard ducks in the South Zone should be lowered or the season on mallards closed because of low population numbers. The department disagrees with the comment and responds that population data indicate that continental mallard populations are in no danger of being negatively impacted by hunting activity. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the season in the South Zone should start later and run into February. The department disagrees with the comment and responds that under the federal frameworks duck seasons in Texas cannot go beyond the last Sunday in January. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the seasons in the North and South zones should be concurrent. The department disagrees with the comment and responds that by adopting a concurrent split but different opening and closing dates in each zone (one week different for both) a total of two weeks of opportunity is created for hunters. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the season in the South Zone should start no earlier than November 7. The department disagrees with the comment and responds that under the federal frameworks the department is allowed 74 days of opportunity between September 26, 2015 and January 31, 2016. A November 7 opener with a reduced split or no split would result in a decline in hunter success due to the small amount or elim-

ination of time for ducks to congregate and rest, increase their numbers with late arrivals, and lose their wariness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the split should not be concurrent. The department disagrees with the comment and responds that by adopting a concurrent split but different opening and closing dates in each zone (one week different for both) a total of two weeks of opportunity is created for hunters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that duck season and deer season should not open on the same day. The department disagrees with the comments and responds that under federal frameworks, the department is authorized to provide 74 days of duck hunting opportunity between September 26, 2015 and January 31, 2016. Hunter surveys and public comment indicate a preference for: 1) a split season, to allow duck populations to congregate without being subjected to hunting pressure; 2) hunting opportunity over the Thanksgiving and Christmas holiday seasons; and 3) a winter segment that runs to the final day of the framework. The rule as adopted represents the department's best effort to satisfy these criteria. The department would also point out that depending on the county, duck season and deer season would not necessarily open on the same day, although in many counties, the opening days are in close proximity. No changes were made as a result of the comment.

One commenter opposed adoption and stated the season on Mexican whistling ducks should not be closed. The department disagrees with the comment and responds that Mexican whistling ducks (also called tree ducks, fulvous tree ducks, or black-bellied tree ducks) may be taken during the open season as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should run into February. The department disagrees with the comment and responds that under the federal frameworks duck seasons in Texas cannot go beyond the last Sunday in January. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should not be a shortened season on "dusky ducks." The department disagrees with the comment and responds that the season for "dusky ducks" is the longest allowable under the federal frameworks. The department cannot increase the season length beyond what is authorized under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season dates in the North and South Zones should be swapped. The department disagrees with the comment and responds that analysis of harvest data shows that the most significant hunter success in the North Zone occurs in later months such as January, while hunter success in the South Zone occurs earlier, such as November. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a late teal-only season. The department disagrees with the comment and responds that the federal frameworks authorize a 16-day special teal season in September and do not authorize any other special teal season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the South Zone should open later and there should be no split. The department disagrees with the comment and responds that eliminating the split would result in the overall loss of hunting opportunity,

as well as a decline in hunter success due to the elimination of the opportunity for ducks to congregate and rest, increase their numbers with late arrivals, and lose their wariness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the zone boundaries should be changed. The department disagrees with the comment and responds that zone boundaries cannot be altered without the prior approval of the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be the same as in Mississippi. The department disagrees with the comment and responds that Mississippi is in the Mississippi Flyway and the season length is only 60 days. Texas is in the Central Flyway and subject to a different federal framework (74 days). No changes were made as a result of the comment.

The department received 84 comments in support of adoption of the portion of proposed §65.318 that establishes season dates and bag limits for ducks, coots, and mergansers.

#### Geese

The department received 36 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for geese. Of the 36 commenters, 14 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the season for snow geese should open on the same day as duck season. The department disagrees with the comment and responds that because snow geese do not arrive in significant numbers until much later, opening the season in October (when duck seasons open) would result in reduced hunter success. No changes were made as a result of the comment.

One commenter opposed adoption and stated that goose seasons should be shortened and bag limits should be reduced because of population declines. The department disagrees with the comment and responds that there is no credible biological evidence to indicate that the seasons and bag limits as adopted will result in negative impacts to goose populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be an additional two weeks of snow goose opportunity. The department agrees with the comment and responds that the light goose conservation season allows unlimited take of snow geese from February 1 - March 20, 2016. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for white-fronted geese should close earlier and the limit should be three birds in the East Zone. The department disagrees with the comment and responds that there is significant opportunity for white-fronted goose harvest in late January and that having a longer white-fronted goose season with a two-bird limit provides the most opportunity for Texas goose hunters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for white-fronted geese should end one week earlier. The department disagrees with the comment and responds that it is commission policy to adopt the most liberal seasons and bag limits possible under the federal frameworks, consistent with the principles of sound biological management. The department has

selected the maximum season length possible under the federal frameworks and does not believe that populations will be negatively impacted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season dates for light and dark geese should be October 31 - January 24 with the Light Geese Conservation Order starting on January 25th. The department disagrees with the comment and responds that the federal frameworks stipulate that the light goose conservation season cannot open unless all other seasons for migratory birds are closed. Opening the conservation season on January 24 would therefore result in the loss of one week of duck opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that season for dark geese should be concurrent with duck season. The department disagrees with the comment and responds that because the department chooses to provide a split in the duck season, the goose season cannot run concurrently with the duck season because the Service allows 74 days of duck hunting and 86 days of goose hunting. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should run from November 1 to February 1. The department disagrees with the comment and responds that the season as adopted is structured to open on Saturday in order to provide opportunity at a time when people are most likely to go hunting. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open on the same day as duck season. The department disagrees with the comment and responds that because the split seasons are used to maximize hunting opportunity and the season lengths allowed under the federal framework for ducks and geese are different, season dates are established to maximize hunter opportunity for each species. Also harvest data shows that later goose seasons are more successful. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for white-fronted geese should be five. The department disagrees with the comment and responds that federal frameworks allow a 74-day season with a three-bird bag limit, an 86-day season with a two-bird bag limit, or a 107-day season with a one-bird bag limit; therefore, a five-bird bag limit is not possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for white-fronted geese should be 90 days long because of population declines. The department disagrees with the comment and responds that biological information indicates that white-fronted goose populations are increasing in North America and that under the federal frameworks Texas cannot select a season longer than 86 days and still retain the two-bird bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for white-fronts should be longer, but with a lower bag limit. The department disagrees with the comment and responds that public opinion and survey data indicate a preference for at least a two-bird bag limit for white-fronted geese, which means the department cannot select a season longer than 86 days.

The department received 68 comments in support of adoption of the portion of proposed §65.318 that establishes season dates

and bag limits for geese. No changes were made as a result of the comment.

#### Sandhill Cranes

The department received 12 comments opposing adoption of the portion of proposed §65.318 that establishes season dates and bag limits for sandhill cranes. Of the commenters opposing adoption, 11 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the season should open earlier in Zone B. The department disagrees with the comment and responds that the department purposely opens the season in Zone B in November in order to minimize potential negative impacts to whooping cranes, which are endangered, while they are migrating to the Texas Coast. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in Zone C should be 60 days long. The department disagrees with the comment and responds that under the federal frameworks the season in Zone C cannot exceed 37 days. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in Zone C should open on the same day as duck season. The department disagrees with the comment and responds that the season structure is designed to ensure that migrating whooping cranes have already migrated through the zone before it opens. The federal Endangered Species Act requires states to limit any human activity considered hazardous to endangered species, including recreational hunting of similar-appearing migratory game birds. Whooping cranes, which have characteristics similar to sandhill cranes, are typically still in migration to the Aransas National Wildlife Refuge through the beginning of December. Also, the maximum season length in Zone C is 37 days and opening earlier would not coincide with migration patterns of sandhill cranes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for Zone C should be the same as it was last year. The department disagrees with the comment and responds that the season in Zone C closes concurrently with the South Zone for ducks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in Zone C should be longer. The department disagrees with the comments and responds that the federal frameworks provide for a maximum season length in Zone C of 37 days. No changes were made as a result of the comment.

One commenter opposed adoption and stated that compared to last year, the season in Zone C does not afford more hunting opportunity than last year. The department disagrees with the comment and responds that the season structure is the same as last year with the exception of calendar shift and coincides with last year's South Zone duck season dates. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a season for sandhill cranes in Jefferson and Chambers counties. The department disagrees with the comment and responds that under the federal frameworks, crane hunting is authorized only in specific areas. The Service authorizes crane hunting in three zones that encompass approximately the western two-thirds of the state. Much of east Texas is excluded, and the department cannot allow crane hunting in that area without the prior

approval of the Service. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season in Zone B should open on the same day as deer season. The department disagrees with the comment and responds that the department purposely opens the season in Zone B in November in order to minimize potential negative impacts to whooping cranes, which are endangered, while they are migrating to the Texas Coast. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no open season for sandhill cranes. The department disagrees with the comment and responds that the commission policy is to provide the maximum hunting opportunity possible under the federal frameworks, consistent with sound biological management. There is no credible biological information to suggest that an open season for sandhill cranes under the seasons and bag limits as adopted will result in negative impacts to populations. No changes were made as a result of the comment.

The department received 73 comments in support of adoption of the portion of proposed §65.318 that establishes season dates and bag limits for sandhill cranes.

#### Youth-Only Waterfowl Season

The department received 17 comments opposing adoption of the portion of proposed §65.318 that establishes the youth-only waterfowl season. Of the 17 commenters, 8 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the youth-only season should be after the general season or cancelled. The department disagrees with the comment and responds that placing the youth-only dates at the end of the regular season would result in less than desirable hunting conditions for youth, because duck populations at that time of the season are diminished due to hunting and natural mortality and the remaining ducks are extremely wary. Therefore, the department has determined that the weekend prior to the opening of duck season is the ideal time to locate the youth-only days. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the youth-only season should not occur prior to the general season. The department disagrees with the comment and responds that the youth-only dates are placed prior to the beginning of the regular season because placing youth-only dates during the split between segments would defeat the purpose of the split, which is to allow ducks to rest. In addition, placing youth-only dates at the end of the season would result in less than desirable hunting conditions for youth, because duck populations at that time of the season are diminished due to hunting and natural mortality and the remaining ducks are extremely wary. Therefore, the department has determined that the weekend prior to the opening of duck season is the ideal time to locate the youth-only days. No changes were made as a result of the comment.

One commenter opposed adoption and stated that youth-only season is discriminatory. The department disagrees with the comment and responds that under Parks and Wildlife Code, §61.058, the commission is authorized to provide for special open seasons during which the taking and possession of game animals and game birds are restricted to persons under 17

years old, that the federal frameworks provide for a youth-only waterfowl season, and that the youth-only season does not violate any provision of the Texas or United States constitutions. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the youth-only season should be longer. The department disagrees with the comment and responds the federal frameworks specifically provide for a two-day youth-only season and the department believes that this is adequate to provide an opportunity for mentoring. The department believes that additional days of youth hunting would come at the expense of hunter opportunity, since any additional days would count against the maximum of 74 days of hunting allowed under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the youth-only season should not begin until the special archery season for deer has closed. The department disagrees with the comment and responds that the archery season for deer runs from the Saturday closest to September 30 for 35 days; therefore, to avoid opening the youth-only waterfowl season during the archery season, the youth-only waterfowl season would have to occur after the closure of the general waterfowl seasons, which would result in less than desirable hunting conditions for youth. Therefore, the department has determined that the weekend prior to the opening of duck season is the ideal time to locate the youth-only days. No changes were made as a result of the comment.

The department received 79 comments in support of adoption of the portion of proposed §65.318 that establishes the youth-only waterfowl season.

#### Extended Falconry Season

The department received no comments opposing adoption of proposed §65.319 (extended falconry season).

The department received 15 comments supporting adoption of proposed §65.319.

#### Light Goose Conservation Order

The department received 31 comments opposing adoption of proposed §65.321 (light goose conservation order). Of the commenters, 28 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the conservation season should open on Jan. 24. The department disagrees with the comment and responds that under the federal frameworks the conservation season cannot be opened unless all other migratory bird hunting seasons are closed. To open the conservation season on January 24 would mean closing seasons for ducks, geese, and sandhill crane, which would reduce overall hunter opportunity and conflict with commission policy to provide the maximum hunter opportunity possible under federal frameworks issued by the Service. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the conservation season should open on Jan. 25. The department disagrees with the comment and responds that under the federal frameworks the conservation season cannot be opened unless all other migratory bird hunting seasons are closed. To open the conservation season on January 25 would mean closing the season for ducks, geese, and sandhill crane, which would reduce overall hunter opportunity and conflict with commission policy to

provide the maximum hunter opportunity possible under federal frameworks issued by the Service. No changes were made as a result of the comment.

Twenty-two commenters opposed adoption and stated that the conservation season should not be closed. The department agrees with the comment and responds that a season closure was not proposed and never contemplated. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the light goose conservation season should be closed because of population impacts. The department disagrees with the comment and responds that light geese populations continue to exceed recommended levels and efforts to curtail light geese populations must be undertaken to prevent habitat degradation on their Arctic breeding grounds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the conservation season should be shorter. The department disagrees with the comment and responds that light geese populations continue to exceed recommended levels and the Texas harvest is part of the continental effort to maintain populations at levels that prevent habitat degradation on their Arctic breeding grounds; therefore, the maximum amount of hunting opportunity during the conservation season is provided. No changes were made as a result of the comment.

The department received 37 comments in support of adoption of proposed §65.321.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

*§65.318. Open Seasons and Bag and Possession Limits--Late Season.*

Except as specifically provided in this section, the possession limit for all species listed in this section shall be three times the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; three scaup (lesser scaup and greater scaup in the aggregate); two redheads; two pintail; two canvasbacks; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established in subparagraphs (A)(ii), (B)(ii), and (C)(ii) of this paragraph. For all other species not listed, the bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

#### (A) High Plains Mallard Management Unit:

(i) all species other than "dusky ducks": October 31 - November 1, 2015 and November 6, 2015 - January 31, 2016.

(ii) "dusky ducks": November 9, 2015 - January 31, 2016.

#### (B) North Zone:

(i) all species other than "dusky ducks": November 7 - 29, 2015 and December 12, 2015 - January 31, 2016.

(ii) "dusky ducks": November 12 - 29, 2015 and December 12, 2015 - January 31, 2016.

#### (C) South Zone:

(i) all species other than "dusky ducks": October 31 - November 29, 2015 and December 12, 2015 - January 24, 2016.

(ii) "dusky ducks": November 5 - 29, 2015 and December 12, 2015 - January 24, 2016.

(2) Geese.

(A) Western Zone.

(i) Light geese: October 31, 2015 - January 31, 2016. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 31, 2015 - January 31, 2016. The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(B) Eastern Zone.

(i) Light geese: November 7, 2015 - January 31, 2016. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) Season: November 7, 2015 - January 31, 2016;

(II) Bag limit: The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: October 31, 2015 - January 31, 2016. The daily bag limit is three. The possession limit is nine.

(B) Zone B: November 20, 2015 - January 31, 2016. The daily bag limit is three. The possession limit is nine.

(C) Zone C: December 19, 2015 - January 24, 2016. The daily bag limit is two. The possession limit is six.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraphs (1) and (2) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 24 - 25, 2015;

(B) North Zone: October 31 - November 1, 2015; and

(C) South Zone: October 24 - 25, 2015.

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 October 2, 2015.  
TRD-201504119

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: October 22, 2015

Proposal publication date: May 22, 2015

For further information, please call: (512) 389-4775

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**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 3. TAX ADMINISTRATION**

**SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES**

**34 TAC §3.316**

The Comptroller of Public Accounts adopts amendments to §3.316, concerning occasional sales; joint ownership transfers; sales by senior citizen's organizations; sales by university and college student organizations; and sales by nonprofit animal shelters, with changes to the proposed text as published in the April 3, 2015, issue of the *Texas Register* (40 TexReg 1937). The amendments implement House Bill 373, 80th Legislature, 2007.

Subsection (b)(2) is amended to include a reference to new paragraph (4) to clarify that a third sale of a taxable item in a 12-month period may not be taxable if the sale qualifies for exemption under paragraph (4). Paragraph (2) is also amended to update a reference to §3.286 of this title concerning Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules. New paragraph (4) is added to implement House Bill 373. The new paragraph describes when the sale of tangible personal property originally purchased by an individual or someone in the individual's family for personal use is considered an occasional sale. Existing paragraph (5) is renumbered accordingly.

The comptroller received a written comment from Ms. Linda Messing, on behalf of the Texas Society of Certified Public Accountants. Ms. Messing pointed out the title of the section references joint ownership transfers, which are covered in §3.331. The title of this section is amended to remove the reference to joint ownership transfers. Transfers without change in ownership which are discussed in subsection (e) is be inserted into the title of this section.

This amendment 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.

The section implements Tax Code, §151.304 (Occasional Sales).

*§3.316. Occasional Sales; Transfers Without Change in Ownership; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters.*

(a) Sales exempt. A taxable item that is sold or purchased by way of an occasional sale is exempt from sales and use taxes, except as provided by subsection (i) of this section.



(b) Occasional sales by persons not in the business of selling, leasing, or renting.

(1) One or two sales of taxable items, other than an amusement service, during any 12-month period by a person who does not hold himself out as engaged (or who does not habitually engage) in the business of selling taxable items are occasional sales.

(2) The third sale of a taxable item in a 12-month period by a person not previously in the business of selling, leasing, or renting taxable items causes that person to become a retailer. Tax must be collected and reported on the third sale and all subsequent sales unless the sale qualifies for exemption under paragraph (4) of this subsection or subsection (d) or (e) of this section. If three or more sales are made in a 12-month period, then the person must obtain a permit. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules). Example: A lump-sum contractor sells a backhoe in October, a typewriter in December and a crane in February. The contractor has not sold, leased or rented any construction equipment prior to the sale of the backhoe; therefore, the contractor can sell the backhoe and typewriter tax free as occasional sales. The sale of the crane is the third sale within 12 months from the sale of the back-hoe. The sale of the crane is not an occasional sale. The contractor must obtain a permit, collect tax on the sale of the crane and, until an intervening 12 months have passed between sales, all subsequent sales of taxable items.

(3) The sale of not more than ten admissions for amusement services during a 12-month period by a person who does not hold himself out as engaged (or who does not habitually engage) in the provision of amusement services are occasional sales.

(4) The sale of tangible personal property by an individual is an occasional sale if:

(A) the property was originally purchased by the individual or a member of the individual's family for either of their personal use;

(B) the individual does not hold a sales tax permit and is not required to hold a sales tax permit;

(C) the sale is not made through the use of an auctioneer, broker, or factor, other than an online auction; and

(D) the total receipts from such sales do not exceed \$3,000 in a calendar year. If the total receipts from the individual's sales of such tangible personal property exceed \$3,000 in a calendar year, the individual must obtain a sales tax permit and collect tax on all sales of taxable items in this state, beginning with the first sale which causes the total receipts to exceed \$3,000.

(5) The exemption provided under subsection (b) of this section does not apply to a rental or lease of a taxable item.

(c) Persons who hold permits.

(1) Persons who hold themselves out as engaged in the business of selling, leasing, or renting taxable items and persons who sell, lease, or rent three or more taxable items in a 12-month period are retailers for the purposes of this section. Also, persons who sell more than 10 admissions for amusement services during a 12-month period are retailers for the purposes of this section.

(2) Sales that retailers and other persons who hold sales or use tax permits make are not occasional sales, even if the sales are not made in the regular course of business (e.g., a restaurant owner sells a dining table). All sales by a retailer or permit holder are subject to

tax, unless the sales qualify for exemption under subsection (d) or (e) of this section.

(3) Sales that persons who hold direct payment permits make are not occasional sales. All sales by direct payment permit holders are subject to tax unless the sales qualify for exemption under subsection (d) or (e) of this section.

(d) Sale of a business or an identifiable segment of a business.

(1) The sale of the entire operating assets of a business or of a separate division, branch, or identifiable segment of a business is an occasional sale. The lease or rental of an identifiable segment does not qualify as an occasional sale.

(2) The sale of the entire operating assets of a separate division, branch, or identifiable segment of a business is an occasional sale if, prior to the sale, the income and expenses attributable to the separate division, branch or identifiable segment could be separately established from the books of account or record.

(3) For the purposes of this section, a "separate division, branch, or identifiable segment" means an enterprise engaged in providing a product or service to customers, usually for a profit. "Income" means revenue generated by the enterprise in providing that product or service. "Expenses" mean those operating expenses incurred by the enterprise in providing the product or services that are directly traceable to that enterprise. "Operating assets" means tangible personal property used exclusively by the enterprise in providing the product or service but does not mean tangible personal property maintained and used both for general business purposes and by the specific enterprise. Inventory and intangible property are not operating assets for purposes of the exemption.

(4) The entire operating assets of the business or of the division, branch, or identifiable segment of the business must be sold in a single transaction to a single purchaser. The sale of the entire operating assets through several transactions to several purchasers does not qualify as an occasional sale under this section.

(e) Transfer without change in ownership.

(1) Any transfer of all or substantially all the property held or used by a person in the course of an activity, when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer, is an occasional sale. Since ownership must be transferred, "transfer" does not include the lease or rental of property.

(2) For the purposes of this section, stockholders, bondholders, partners, or other persons who hold an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity. Ownership is "substantially similar" if the person who transfers the property owns 80% or more of the stock in the corporation to which the transfer is being made. Ownership is "substantially similar" if 80% or more of the stock in the corporation that makes the transfer is owned by the transferee.

(3) "All or substantially all" of the property is considered transferred if 80% or more is transferred.

(f) Occasional sales as defined in subsections (d) and (e) of this section are not restricted by subsections (a) and (b) of this section. Three or more sales of the type defined in subsections (d) and (e) of this section would not result in the loss of the occasional sale exemption.

(g) Resale certificates - occasional sales - leases.

(1) When a lessor purchases a taxable item tax free for rental or lease and later sells, leases, or rents the item by way of an occasional sale as provided in subsection (d) or (e) of this section, then

the lessor owes tax on the amount by which the lessor's purchase price exceeds the amount of rent, if any, upon which tax has been collected and reported from the prior rental or lease of the item.

(2) If the item was exempt from sales tax when originally purchased by the lessor or if tax was paid on the full purchase price at the time of purchase by the lessor, then the lessor does not incur sales tax liability on the original purchase price when sold by way of an occasional sale as provided in subsection (d) or (e) of this section.

(h) Purchases exempt from tax. The purchase price of an item that is sold by means of an occasional sale is not subject to tax, except as provided in subsection (i) of this section.

(i) Exception to subsection (h) of this section. A person who holds a permit that is issued pursuant to Tax Code, Chapter 151, and who makes a purchase in a transaction on which the seller is not required to collect tax under subsection (b) of this section, must accrue and remit tax to the comptroller on the transaction.

(j) Senior citizens' organizations. Sales that a senior citizens' organization makes are exempt from tax if all of the following qualifications are met:

(1) all of the taxable items sold are manufactured, produced, made, or assembled exclusively by persons 65 years old or older;

(2) the sale is part of a fund-raising drive held or sponsored by a nonprofit organization created for the sole purpose of providing assistance to elderly persons;

(3) all net proceeds from the sale go to either the organization or the person who produced the taxable item sold or both; and

(4) the organization has not conducted more than four separate fund-raising drives each calendar year for a total of not more than 20 days per year.

(k) University and college student organizations.

(1) A sale of a taxable item by a qualified student organization is exempt from sales tax if:

(A) the student organization sells the items at a sale that lasts for one day only, and the primary purpose of the sale is to raise funds for the organization;

(B) the student organization holds not more than one fund-raising sale each calendar month for which the exemption is claimed;

(C) the student organization has as its primary purpose a purpose other than being engaged in business or performance of an activity that is designed to make a profit; and

(D) the sales price of the taxable item is \$5,000 or less, except that a taxable item that the organization manufactures or has received by donation may be sold tax free during the one-day sale, regardless of sales price, if the item is not sold to the donor.

(2) A taxable item acquired tax free under paragraph (1) of this subsection is exempt from use tax on its storage, use, or consumption until the item is resold or subsequently transferred.

(3) The first \$5,000 of a qualified student organization's total receipts from sales of taxable items in a calendar year that are not exempted under paragraph (1) of this subsection are exempt from sales tax.

(4) A qualified student organization must be affiliated with an institution of higher education as defined by Education Code, §61.003, or a private or independent college or university that is

located in this state and that is accredited by a recognized accrediting agency under Education Code, §61.003. A student organization must file with the comptroller a certification issued by the institution, college, or university showing that the organization is affiliated with the institution, college, or university. A college, university, or institution may designate one of its departments or officers to compile a list of registered or certified student organizations and submit the list to the comptroller in lieu of having each student organization submit individual certifications. The certification is valid until the institution, university, or college notifies the comptroller that a student organization is decertified, suspended, or otherwise loses its campus privileges or affiliation with the institution, university, or college.

(l) Sales by religious, educational, charitable organizations, and organizations classified as 501(c)(3), (4), (8), (10), or (19).

(1) A religious, educational, charitable, eleemosynary organization, or an organization exempt under Internal Revenue Code, §501(c)(3), (4), (8), (10), or (19) that has been granted exempt status by the comptroller, and each bona fide chapter of an exempt organization, is not required to collect sales tax on the sales price of taxable items sold for \$5000 or less at a sale or auction held by the organization or chapter only twice a calendar year and each sale or auction lasting only one day. See §3.322 of this title (relating to Exempt Organizations). Additionally, a taxable item may be sold tax free during a one-day tax-free sale or auction, regardless of price, if the item is one that the organization manufactured or has received by donation and the item is not sold to the donor.

(2) One day is a consecutive 24-hour period. If a designated tax-free sale or auction exceeds a consecutive 24-hour period, the organization or chapter may not hold another tax-free sale or auction that calendar year. An organization or chapter may hold the two tax-free sales or auctions consecutively, but the two tax-free sales or auctions by that organization or chapter cannot exceed a maximum of 48 consecutive hours in a calendar year.

(3) The organization may employ an auctioneer to conduct the sale or auction and pay the auctioneer a reasonable fee not to exceed 20% of the gross receipts.

(4) If two or more exempt organizations or chapters jointly hold a tax-free sale or auction, each is considered to have held a tax-free sale or auction during that calendar year. Each exempt organization that participates in a joint one-day tax-free sale or auction may hold one other tax-free sale or auction during the remainder of that calendar year.

(m) Sales by nonprofit animal shelters. The sale, including the acceptance of a fee for adoption, of an animal by a nonprofit animal shelter is exempt from sales and use taxes. The term "animal shelter" is defined in Health and Safety Code, §823.001, as a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.

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 October 2, 2015.

TRD-201504110

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: October 22, 2015

Proposal publication date: April 3, 2015

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

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

**PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

**CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES**

**SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS**

**37 TAC §4.1**

The Texas Department of Public Safety (the department) adopts amendments to §4.1, concerning Transportation of Hazardous Materials. This section is adopted without changes to the proposed text as published in the August 28, 2015 issue of the *Texas Register* (40 TexReg 5447) and will not be republished.

These proposed amendments are necessary to harmonize updates in Title 49, Code of Federal Regulations with those laws adopted by Texas.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 October 1, 2015.

TRD-201504095  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: October 21, 2015  
Proposal publication date: August 28, 2015  
For further information, please call: (512) 424-5848

◆ ◆ ◆  
**SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY**

**37 TAC §4.13**

The Texas Department of Public Safety (the department) adopts amendments to §4.13, concerning Authority to Enforce, Training and Certificate Requirements. This section is adopted without changes to the proposed text as published in the August 28, 2015, issue of the *Texas Register* (40 TexReg 5449) and will not be republished.

The amendments are necessary to ensure this section is consistent with the Texas Transportation Code, §644.101, which estab-

lishes which peace officers are eligible to enforce Chapter 644 of the Texas Transportation Code.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 October 1, 2015.

TRD-201504096  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: October 21, 2015  
Proposal publication date: August 28, 2015  
For further information, please call: (512) 424-5848

◆ ◆ ◆  
**CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS**  
**SUBCHAPTER D. SILVER ALERT NETWORK**

**37 TAC §9.32**

The Texas Department of Public Safety (the department) adopts amendments to §9.32, concerning Local Law Enforcement Responsibility. This section is adopted without changes to the proposed text as published in the August 28, 2015, issue of the *Texas Register* (40 TexReg 5451) and will not be republished.

The department has updated the Silver Alert Request Form. The amendment to the rule text reflects the change in form names from the MP-25 to the TDEM-26 and replaces the old form with the new form.

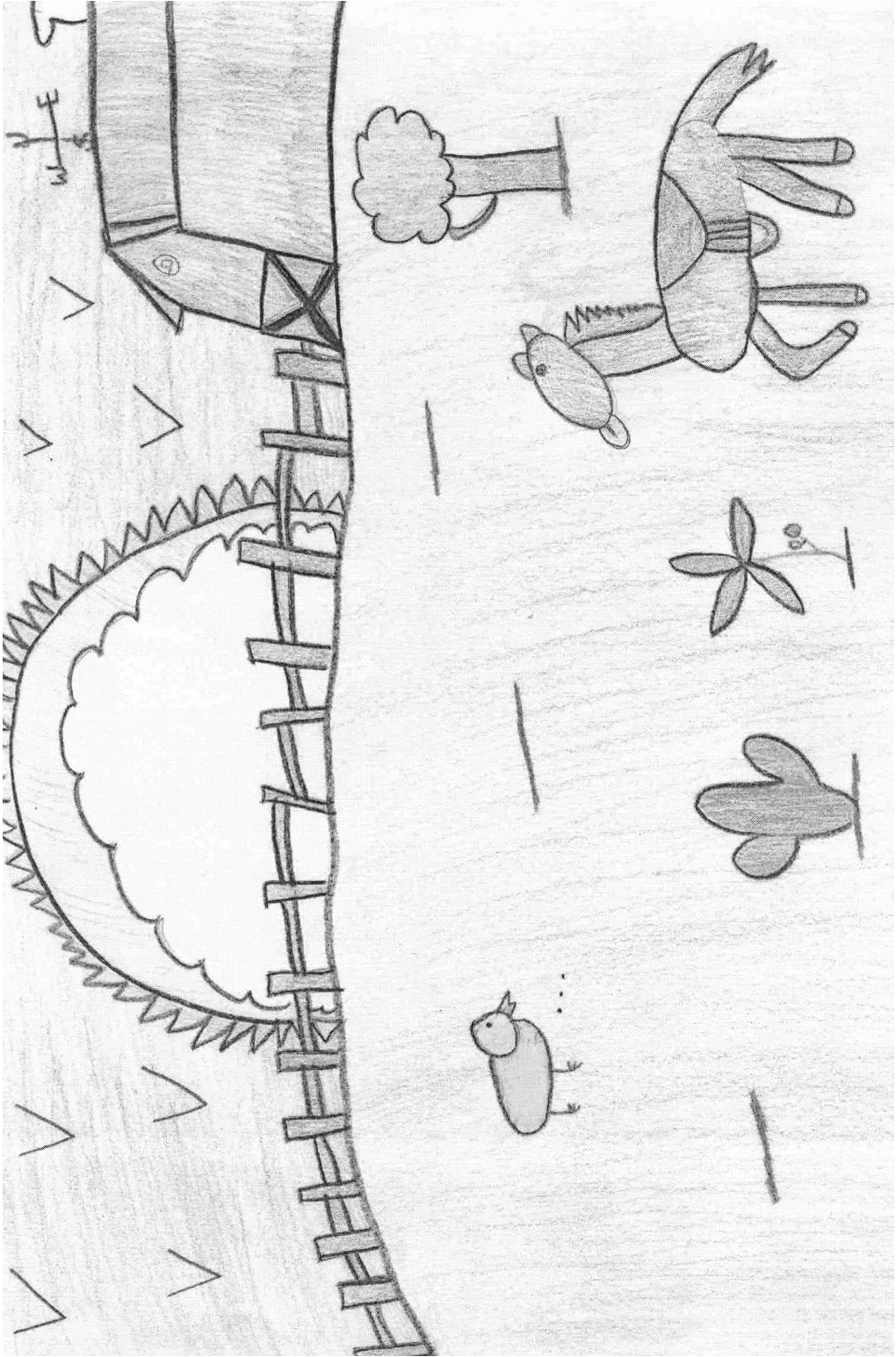
No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.383(b), which authorizes the director to adopt rules to ensure proper implementation of the alert.

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 October 1, 2015.

TRD-201504097  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: October 21, 2015  
Proposal publication date: August 28, 2015  
For further information, please call: (512) 424-5848



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Board of Pardons and Paroles

### Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal Texas Administrative Code, Title 37, Part 5, Chapter 146 (Revocation of Parole or Mandatory Supervision).

The Board undertakes its review pursuant to Government Code, §2001.039. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*.

The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov).

TRD-201504123

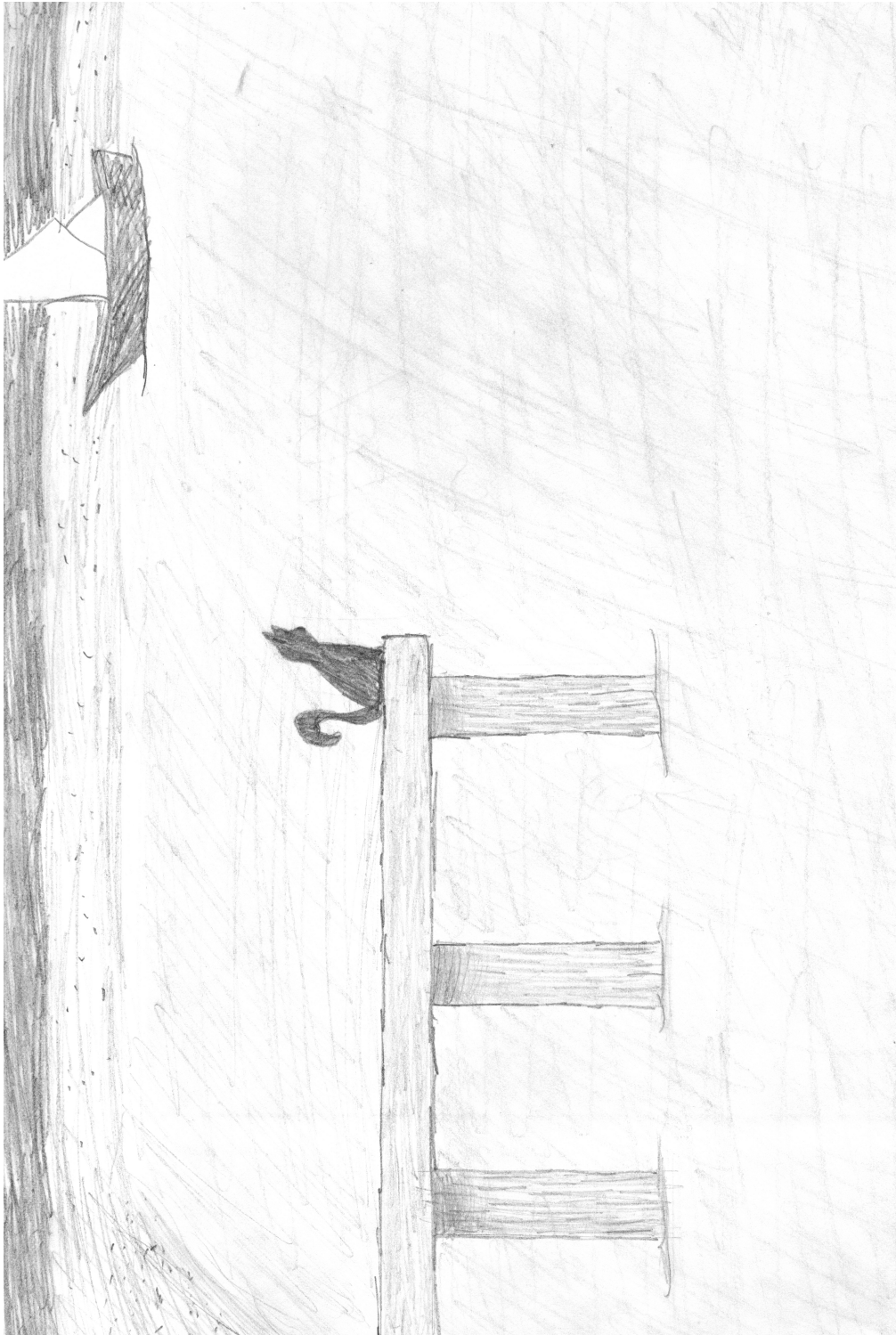
Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: October 5, 2015





# TABLES &

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# GRAPHICS

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

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

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Figure: 19 TAC §101.3041(b)(1)

English: State of Texas Assessments of Academic Readiness Grades 3-8 Assessments Performance Standards

English Assessments	2015-2016 Standard	2016-2017 Standard	2017-2018 Standard	2018-2019 Standard	2019-2020 Standard	2020-2021 Standard	2021-2022 Recommended Level II	Recommended Level III
Grade 3 Mathematics	1360	1381	1402	1423	1444	1465	1486	1596
Grade 4 Mathematics	1467	1487	1507	1528	1548	1569	1589	1670
Grade 5 Mathematics	1500	1521	1542	1563	1583	1604	1625	1724
Grade 6 Mathematics	1536	1556	1575	1595	1614	1634	1653	1772
Grade 7 Mathematics	1575	1594	1613	1631	1650	1669	1688	1798
Grade 8 Mathematics	1595	1612	1630	1647	1665	1682	1700	1854
Grade 3 Reading	1345	1365	1386	1406	1427	1447	1468	1555
Grade 4 Reading	1434	1454	1473	1492	1511	1531	1550	1633
Grade 5 Reading	1470	1489	1508	1526	1545	1563	1582	1667
Grade 6 Reading	1517	1536	1554	1573	1592	1610	1629	1718
Grade 7 Reading	1567	1585	1603	1621	1638	1656	1674	1753
Grade 8 Reading	1587	1606	1625	1643	1662	1681	1700	1783
Grade 4 Writing	3550	3625	3700	3775	3850	3925	4000	4612
Grade 7 Writing	3550	3625	3700	3775	3850	3925	4000	4602
Grade 5 Science	3550	3625	3700	3775	3850	3925	4000	4402



English Assessments	2015-2016 Standard	2016-2017 Standard	2017-2018 Standard	2018-2019 Standard	2019-2020 Standard	2020-2021 Standard	2021-2022 Recommended Level II	Recommended Level III
Grade 8 Science	3550	3625	3700	3775	3850	3925	4000	4406
Grade 8 Social Studies	3550	3625	3700	3775	3850	3925	4000	4268

Spanish: State of Texas Assessments of Academic Readiness Grades 3-8 Assessments Performance Standards

Spanish Assessments	2015-2016 Standard	2016-2017 Standard	2017-2018 Standard	2018-2019 Standard	2019-2020 Standard	2020-2021 Standard	2021-2022 Recommended Level II	Recommended Level III
Grade 3 Mathematics	1360	1381	1402	1423	1444	1465	1486	1596
Grade 4 Mathematics	1467	1487	1507	1528	1548	1569	1589	1670
Grade 5 Mathematics	1500	1521	1542	1563	1583	1604	1625	1724
Grade 3 Reading	1318	1339	1360	1381	1402	1423	1444	1532
Grade 4 Reading	1413	1434	1455	1476	1497	1518	1539	1636
Grade 5 Reading	1461	1481	1501	1522	1542	1562	1582	1701
Grade 4 Writing	3550	3625	3700	3775	3850	3925	4000	4543
Grade 5 Science	3550	3625	3700	3775	3850	3925	4000	4402

Figure: 19 TAC §101.3041(b)(2)

**State of Texas Assessments of Academic Readiness Alternate Grades 3-8 Assessments Conversion Table  
Reading, Writing, Mathematics, Science, and Social Studies**

Performance Level	Score
Level I: Developing	100-296
Level II: Satisfactory	300-377
Level III: Accomplished	387-507

Figure: 19 TAC §101.3041(e)(1)

**State of Texas Assessments of Academic Readiness End-of-Course Assessments Performance Standards\***

Assessment	2015-2016 Standard	2016-2017 Standard	2017-2018 Standard	2018-2019 Standard	2019-2020 Standard	2020-2021 Standard	2021-2022 Recommended Level II	Recommended Level III
Algebra I	3550	3625	3700	3775	3850	3925	4000	4333
Biology	3550	3625	3700	3775	3850	3925	4000	4576
English I	3775	3813	3850	3888	3925	3963	4000	4691
English II	3775	3813	3850	3888	3925	3963	4000	4831
U.S. History	3550	3625	3700	3775	3850	3925	4000	4440

\* The standard in place when a student first takes an EOC assessment is the standard that will be maintained throughout the student's school career. Standards apply beginning with students first enrolled in Grade 9 or below in 2011-2012.

Figure: 19 TAC §101.3041(c)(2)

**State of Texas Assessments of Academic Readiness Alternate End-of-Course Assessments Conversion Table**  
**Algebra I, Biology, English I, English II, and U.S. History**

Performance Level	Score
Level I: Developing	100-296
Level II: Satisfactory	300-377
Level III: Accomplished	387-507

# IN

# ADDITION

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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.

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## Department of Aging and Disability Services

Notice - Procurement of Services by Area Agencies on Aging

The Department of Aging and Disability Services' Access and Intake Division - Area Agencies on Aging Section oversees the delivery of Older Americans Act services for individuals 60 years of age and older, their family members, and other caregivers through contracts with area agencies on aging located throughout the state. These 28 area agencies on aging are currently seeking qualified entities to provide services such as: Congregate Meals, Home Delivered Meals, Transportation, Personal Assistance, Homemaker, and Caregiver, as well as other related services. Parties interested in providing services must contact the

area agency on aging operating within their service area to obtain information relating to vendor open enrollment, requests for proposals (RFP), the contracting process, the types of services being considered, and the actual funding available.

Identified in the comprehensive list are all area agencies on aging, contact information, addresses, telephone numbers, and service areas:

List of Area Agencies on Aging

### **Area Agency on Aging of the Alamo Area**

8700 Tesoro, Suite 700  
San Antonio, Texas 78217-6228  
Ph: 210-362-5561 **1-866-231-4922**  
Fax: 210-225-5937

Director:

Rose Ryan, Director  
[rryan@aacog.com](mailto:rryan@aacog.com)

Executive Director:

Alamo Area Council of Governments  
Mr. Dean Danos, Executive Director  
[ddanos@aacog.com](mailto:ddanos@aacog.com)

Fiscal Director:

Blanca Tapia  
[btapia@aacog.com](mailto:btapia@aacog.com)

Contact:

Andrew Perez  
[aperez@aacog.com](mailto:aperez@aacog.com)

Counties Served: Atascoca, Bandera, Comal, Frio,  
Gillespie, Guadalupe; Karnes, Kendall, Kerr, Medina,  
Willson

### **Area Agency on Aging of Ark-Tex**

P. O. Box 5307  
Texarkana, Texas 75505-5307  
Ph: 903-832-8636 **1-800-372-4464**  
Fax: 903-832-3441

Director:

Ms. Diane McKinnon, Manager  
[dmckinnon@atcog.org](mailto:dmckinnon@atcog.org)

Executive Director:

Ark-Tex Council of Governments  
Mr. L.D. Williamson, Executive Director  
[ldwilliamson@atcog.org](mailto:ldwilliamson@atcog.org)

Fiscal Director:

Brenda Davis  
[bdavis@atcog.org](mailto:bdavis@atcog.org)

Contact:

Debra Newton  
[dnewton@atcog.org](mailto:dnewton@atcog.org)

Counties Served: Bowie, Cass, Delta, Franklin,  
Hopkins, Lamar, Morris, Red River, Titus

### **Area Agency on Aging of Bexar County**

8700 Tesoro, Suite 700  
San Antonio, Texas 78217-6228  
Ph: 210-362-5254 **1-800-960-5201**  
Fax: 210-225-5937

Director:

Rose Ryan, Director  
[rryan@aacog.com](mailto:rryan@aacog.com)

Executive Director:

Alamo Area Council of Governments  
Mr. Dean Danos, Executive Director  
[ddanos@aacog.com](mailto:ddanos@aacog.com)

Fiscal Director:

Blanca Tapia  
[btapia@aacog.com](mailto:btapia@aacog.com)

Contact:

Andrew Perez  
[aperez@aacog.com](mailto:aperez@aacog.com)

Counties Served: Bexar

### **Area Agency on Aging of Brazos Valley**

P. O. Box 4128  
Bryan, Texas 77805-4128  
Ph: 979-595-2806 **1-800-994-4000**  
Fax: 979-595-2810

Director:

Mr. Ronnie Gipson, Director  
[rgipson@bvcog.org](mailto:rgipson@bvcog.org)

Executive Director:

Brazos Valley Council of Governments  
Mr. Tom M. Wilkinson, Jr., Executive Director  
[twilkinson@bvcog.org](mailto:twilkinson@bvcog.org)

Fiscal Director:

Deborah Krusekopf  
[dkrusekopf@bvcog.org](mailto:dkrusekopf@bvcog.org)

Contact:

Kay Wilson  
[kwilson@bvcog.org](mailto:kwilson@bvcog.org)

Counties Served: Brazos, Burlleson, Grimes, Leon,  
Madison, Robertson, Washington

**Area Agency on Aging of the Capital Area**

6800 Burleson Rd. Bldg. 310, STE 165  
Austin, Texas 78744-2306  
Ph: 512-916-6062 **1-888-622-9111**  
Fax: 512-916-6042

Director:

Ms. Jennifer Scott, Director  
[jscott@capcog.org](mailto:jscott@capcog.org)

Executive Director:

Capital Area Council of Governments  
Ms. Betty Voights, Executive Director  
[bvoights@capcog.org](mailto:bvoights@capcog.org)

Fiscal Director:

James Mikolaichik  
[jmikolaichik@capcog.org](mailto:jmikolaichik@capcog.org)

Contact:

Michael Weddell  
[mjweddell@capcog.org](mailto:mjweddell@capcog.org)

Counties Served: Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, Williamson

**Area Agency on Aging of Central Texas**

2180 North Main Street  
Belton, Texas 76513-1919  
Ph: 254-770-2330 **1-800-447-7169**  
Fax: 254-770-2349

Director:

Mr. H. Richard McGhee, Director  
[richard.mcghee@ctcog.org](mailto:richard.mcghee@ctcog.org)

Executive Director:

Central Texas Council of Governments  
Mr. Jim Reed, Executive Director  
[jreed@ctcog.org](mailto:jreed@ctcog.org)

Fiscal Director:

Michael Irvine  
[mirvine@ctcog.org](mailto:mirvine@ctcog.org)

Contact:

Sharon Harrell

Counties Served: Bell, Coryell, Hamilton, Lampasas, Milam, Mills, San Saba

**Area Agency on Aging of the Coastal Bend**

P. O. Box 9909  
Corpus Christi, Texas 78469  
Ph: 361-883-3935 **1-800-817-5743**  
Fax: 361-883-5749

Director:

Ms. Betty Lamb, Director  
[betty@cbcogaaa.org](mailto:betty@cbcogaaa.org)

Executive Director:

Coastal Bend Council of Governments  
Mr. John P. Buckner, Executive Director  
[john@cbcog98.org](mailto:john@cbcog98.org)

Fiscal Director:

Veronica Toomey  
[veronica@cbcog98.org](mailto:veronica@cbcog98.org)

Contact:

361-323-5327

Counties Served: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio

**Area Agency on Aging of Concho Valley**

2801 W. Loop 306, Suite A  
San Angelo, Texas 76904-6502  
Ph: 325-223-5704 **1-877-944-9666**  
Fax: 325-223-8233

Director:

Toni Gutierrez, Director  
[Toni.gutierrez@cvcog.org](mailto:Toni.gutierrez@cvcog.org)

Executive Director:

Concho Valley Council of Governments  
Mr. Jeffrey K. Sutton, Executive Director  
[jsutton@cvcog.org](mailto:jsutton@cvcog.org)

Fiscal Director:

Nancy Pahira  
[Nancy@cvcog.org](mailto:Nancy@cvcog.org)

Contact:

[@cvcog.org](mailto:@cvcog.org)

Counties Served: Coke, Concho, Crockett, Irion, Kimble, Mason, Mculloch, Menard, Reagan, Schleicher, Sterling, Sutton, Tom Green

**Area Agency on Aging of Dallas County**

1349 Empire Central, Ste. 400  
Dallas, Texas 75247-4033  
Ph: 214-871-5065 **1-800-548-1873**  
Fax: 214-871-7442

Director:

Marilyn Self, Director  
[mself@ccgd.org](mailto:mself@ccgd.org)

Executive Director:

Community Council of Greater Dallas  
Ms. Martha Blaine, Executive Director  
[mblaine@ccgd.org](mailto:mblaine@ccgd.org)

Fiscal Director:

Vicki White  
[vwhite@ccgd.org](mailto:vwhite@ccgd.org)

Contact:

Dena Boyd  
[dboyd@ccgd.org](mailto:dboyd@ccgd.org)

Counties Served: Dallas

**Area Agency on Aging of Deep East Texas**

210 Premier Drive  
Jasper, Texas 75951-7495  
Ph: 409-384-7614 **1-800-435-3377**  
Fax: 409-384-6177

Director:

Ms. Holly Anderson, Director  
[handerson@detcog.org](mailto:handerson@detcog.org)

Executive Director:

Deep East Texas Council of Governments  
Mr. Walter Diggles, Executive Director  
[wdiggles@detcog.org](mailto:wdiggles@detcog.org)

Fiscal Director:

Catina Boykin  
[cboykin@detcog.org](mailto:cboykin@detcog.org)

Contact:

Holly Anderson

Counties Served: Angelina, Houston, Jasper,  
Nacogdoches, Newton, Polk, Sabine, San Augustine,  
San Jacinto, Shelby, Trinity, Tyler

**Area Agency on Aging of East Texas**

3800 Stone Road  
Kilgore, Texas 75662-6927  
Ph: 903-984-8641 **1-800-442-8845**  
Fax: 903-984-4482

Director:

Bettye Mitchell, Director  
[Bettye.mitchell@etcog.org](mailto:Bettye.mitchell@etcog.org)

Executive Director:

East Texas Council of Governments  
Mr. David Cleveland, Executive Director  
[David.cleveland@etcog.org](mailto:David.cleveland@etcog.org)

Fiscal Director:

Judy Durland  
[Judy.durland@twc.state.tx.us](mailto:Judy.durland@twc.state.tx.us)

Contact:

Beverly Brown

Counties Served: Anderson, Camp, Cherokee, Gregg,  
Harrison, Henderson, Marion, Panola, Rains, Rusk,  
Smith, Upshur, VanZandt, Wood

**Area Agency on Aging of the Golden Crescent Region**

120 South Main St. STE 210  
Victoria, Texas 77901  
Ph: 361-578-1587 **1-800-574-9745**  
Fax: 361-578-8865

Director:

Ms. Cindy Cornish, Director  
[cindyco@gcrpc.org](mailto:cindyco@gcrpc.org)

Executive Director:

Golden Crescent Regional Planning Commission  
Mr. Joe E. Brannan, Executive Director  
[jbrannan@gcprc.org](mailto:jbrannan@gcprc.org)

Fiscal Director:

Cynthia Skarpa  
[cindys@gcrpc.org](mailto:cindys@gcrpc.org)

Contact:

Cynthia Skarpa

Counties Served: Calhoun, DeWitt, Goliad, Gonzales,  
Jackson, Lavaca, Victoria



**Area Agency on Aging of Harris County**

8000 North Stadium Drive, 3rd. Floor  
Houston, Texas 77054-1823  
Ph: 832-393-4301  
Fax: 832-393-5214

Director:

Ms. Deborah A. Moore, Director  
[deborahA.moore@houstontx.gov](mailto:deborahA.moore@houstontx.gov)

Executive Director:

Houston Dept. of Health & Human Services  
Stephen Williams, Director  
[stephen.williams@houstontx.gov](mailto:stephen.williams@houstontx.gov)

Fiscal Director:

Monica Mitchell  
[monica.mitchell@houstontx.gov](mailto:monica.mitchell@houstontx.gov)

Contact:

Celina Ridge

Counties Served: Harris

**Area Agency on Aging of the Heart of Texas**

1514 S. New Rd.  
Waco, Texas 76711-1316  
Ph: 254-292-1800  
Fax: 254-756-0102

Director:

Mr. Gary Luft, Director  
[Gary.Luft@hot.cog.tx.us](mailto:Gary.Luft@hot.cog.tx.us)

Executive Director:

Heart of Texas Council of Governments  
Mr. Russell Devorsky, Executive Director  
[russell.devorsky@hot.cog.tx.us](mailto:russell.devorsky@hot.cog.tx.us)

Fiscal Director:

John Minnix  
[John.minnix@hot.cog.tx.us](mailto:John.minnix@hot.cog.tx.us)

Contact:

Donnis Cowan

Counties Served: Bosque, Falls, Freestone, Hill,  
Limestone, McLennan

**Area Agency on Aging of Houston-Galveston**

P. O. Box 22777  
Houston, Texas 77227-2777  
Ph: 713-627-3200 **1-800-437-7396**  
Fax: 713-993-2447

Director:

Mr. Curtis M. Cooper, Manager  
[curtis.cooper@h-gac.com](mailto:curtis.cooper@h-gac.com)

Executive Director:

Houston-Galveston Area Council  
Mr. Jack Steele, Executive Director  
[jack.steele@H-GAC.com](mailto:jack.steele@H-GAC.com)

Fiscal Director:

Nancy Haussler  
[Nancy.haussler@h-gac.com](mailto:Nancy.haussler@h-gac.com)

Contact:

David Waller

Counties Served: Austin, Brazoria, Chambers,  
Colorado, Fort Bend, Galveston, Liberty, Matagorda,  
Montgomery, Walker, Waller, Wharton

**Area Agency on Aging of the Lower Rio Grande Valley**

301 West Railroad St.  
Weslaco, Texas 78596  
Ph: 956-682-3481 **1-800-365-6131**  
Fax: 956-682-8852

Director:

Mr. Jose L. Gonzalez, Director  
[jgonzalez@lrgvdc.org](mailto:jgonzalez@lrgvdc.org)

Executive Director:

Lower Rio Grande Valley Development Council  
Mr. Kenneth N. Jones, Executive Director  
[knjones@lrgvdc.org](mailto:knjones@lrgvdc.org)

Fiscal Director:

Ann Lyles  
[lyles@acnet.net](mailto:lyles@acnet.net)

Contact:

Crystal Balboa  
[cbalboa@lrgvdc.org](mailto:cbalboa@lrgvdc.org)

Counties Served: Cameron, Hidalgo, Willacy

**Area Agency on Aging of the Middle Rio Grande Area**

P. O. Box 1199  
Carrizo Springs, Texas 78834-3211  
Ph: 830-876-3533 **1-800-224-4262**  
Fax: 830-876-9415

Director:

Mr. Conrado Longoria, Jr. Director  
[conrado.longoria@mrgdc.org](mailto:conrado.longoria@mrgdc.org)

Executive Director:

Middle Rio Grande Development Council  
Mr. Leodoro Martinez, Executive Director  
[leodoro.martinez@mrgdc.org](mailto:leodoro.martinez@mrgdc.org)

Fiscal Director:

Joe D. Cruz, Jr.  
[Joe.cruz@mrgdc.org](mailto:Joe.cruz@mrgdc.org)

Contact:

Pete Perez

Counties Served: Dimmit, Edwards, Kinney, LaSalle, Maverick, Real, Uvalde, Val Verde, Zavala

**Area Agency on Aging of North Central TX**

P. O. Box 5888  
Arlington, Texas 76005-5888  
Ph: 817-695-9194 **1-800-272-3921**  
Fax: 817-695-9274

Director:

Ms. Doni Green, Manager  
[dgreen@nctcog.org](mailto:dgreen@nctcog.org)

Executive Director:

North Central Texas Council of Governments  
Mr. Mike Eastland, Executive Director  
[meastland@nctcog.org](mailto:meastland@nctcog.org)

Fiscal Director:

Shannan Ramirez  
[sramirez@nctcog.org](mailto:sramirez@nctcog.org)

Contact:

Mona Barbee

Counties Served: Collin, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Wise

**Area Agency on Aging of North Texas**

P. O. Box 5144  
Wichita Falls, Texas 76307-5144  
Ph: 940-322-5281 **1-800-460-2226**  
Fax: 940-322-6743

Director:

Ms. Rhonda K. Pogue, Director  
[rpogue@nortexrpc.org](mailto:rpogue@nortexrpc.org)

Executive Director:

Nortex Regional Planning Commission  
Mr. Dennis Wilde, Executive Director  
[dwilde@nortexrpc.org](mailto:dwilde@nortexrpc.org)

Fiscal Director:

James Springer  
[jspringer@nortexrpc.org](mailto:jspringer@nortexrpc.org)

Contact:

Rhonda Pogue

Counties Served: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, Young

**Area Agency on Aging of the Panhandle Area**

P. O. Box 9257  
Amarillo, Texas 79105-9257  
Ph: 806-331-2227 **1-800-642-6008**  
Fax: 806-373-3268

Director:

Ms. Melissa Carter, Director  
[mcarter@prpc.cog.tx.us](mailto:mcarter@prpc.cog.tx.us)

Executive Director:

Panhandle Regional Planning Commission  
Mr. Gary Pitner, Executive Director  
[Gpitner@theprpc.org](mailto:Gpitner@theprpc.org)

Fiscal Director:

Cindy Boone  
[cboone@theprpc.org](mailto:cboone@theprpc.org)

Contact:

Christy Henderson

Counties Served: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler

**Area Agency on Aging of the Permian Basin**

P.O. Box 60660  
Midland, Texas 79711-0660  
Ph: 432-563-1061 **1-800-491-4636**  
Fax: 432-567-1011

Director:

Ms. Jeannie Raglin, Director  
[jraglin@aaapbcom](mailto:jraglin@aaapbcom)

Executive Director:

Permian Basin Regional Planning Commission  
Ms. Terri Moore, Executive Director  
[tmoore@pbrpc.org](mailto:tmoore@pbrpc.org)

Fiscal Director:

Helen Grady  
[heleng@pbrpc.org](mailto:heleng@pbrpc.org)

Contact:

Jeannie Raglin

Counties Served: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler

**Area Agency on Aging of the Rio Grande Area**

8037 Lockheed STE 100  
El Paso, Texas 79925  
Ph: 915-533-0998 **1-800-333-7082**  
Fax: 915-544-5402

Director:

Ms. Yvette Lugo, Director  
[yvettel@riocog.org](mailto:yvettel@riocog.org)

Executive Director:

Rio Grande Council of Governments  
Ms. Annette Gutierrez, Executive Director  
[anneteg@riocog.org](mailto:anneteg@riocog.org)

Fiscal Director:

Hector F. Diaz  
[hectord@riocog.org](mailto:hectord@riocog.org)

Contact:

Lorena Estrada  
[lorenae@riocog.org](mailto:lorenae@riocog.org)

Counties Served: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio

**Area Agency on Aging of Southeast TX**

2210 Eastex Freeway  
Beaumont, Texas 77703-4929  
Ph: 409-924-3381 **1-800-395-5465**  
Fax: 409-899-4829

Director:

Colleen Halliburton, Director  
[challiburton@setrpc.org](mailto:challiburton@setrpc.org)

Executive Director:

South East Texas Regional Planning Commission  
Mr. Shaun Davis, Executive Director  
[sdavis@setrpc.org](mailto:sdavis@setrpc.org)

Fiscal Director:

Jim Borel  
[jborel@setrpc.org](mailto:jborel@setrpc.org)

Contact:

Teri Barnes  
[tbarnes@setrpc.org](mailto:tbarnes@setrpc.org)

Counties Served: Hardin, Jefferson, Orange

**Area Agency on Aging of South Plains**

P. O. Box 3730 / Freedom Station  
Lubbock, Texas 79452  
Ph: 806-687-0940 **1-888-418-6564**  
Fax: 806-765-9544

Director:

Ms. Liz Castro, Director  
[lcastro@spag.org](mailto:lcastro@spag.org)

Executive Director:

South Plains Association of Governments  
Mr. Tim C. Pierce, Executive Director  
[tpierce@spag.org](mailto:tpierce@spag.org)

Fiscal Director:

Tim Schwartz  
[tschwartz@spag.org](mailto:tschwartz@spag.org)

Contact:

Al Garcia

Counties Served: Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry, Yoakum

**Area Agency on Aging of South Texas**

P.O. Box 2187  
Laredo, Texas 78044-2187  
Ph: 956-722-3995 **1-800-292-5426**  
Fax: 956-722-2670

Director:

Mr. Alberto Rivera, Jr., Aging Services Director  
[arivera@stdc.cog.tx.us](mailto:arivera@stdc.cog.tx.us)

Executive Director:

South Texas Development Council  
Mr. Amando Garza, Jr., Executive Director  
[agarzajr@stdc.cog.tx.us](mailto:agarzajr@stdc.cog.tx.us)

Fiscal Director:

Contact:

Robert Mendiola Nancy Rodriquez  
[mendiola@stdc.cog.tx.us](mailto:mendiola@stdc.cog.tx.us)

Counties Served: Jim Hogg, Starr, Webb, Zapata

**Area Agency on Aging of Tarrant County**

1500 N. Main St. Suite 200  
Fort Worth, Texas 76164-0448  
Ph: 817-258-8081 **1-877-886-4833**  
Fax: 817-258-8074

Director:

Mr. Don Smith, Director  
[Don.smith@unitedwaytarrant.org](mailto:Don.smith@unitedwaytarrant.org)

Executive Director:

United Way Metropolitan Tarrant County  
Ms. Ann Rice, Sr. Vice President  
[ann.rice@unitedwaytarrant.org](mailto:ann.rice@unitedwaytarrant.org)

Fiscal Director:

Contact:

Brandon Booker Chan Souvannavong  
[brandon.booker@unitedwaytarrant.org](mailto:brandon.booker@unitedwaytarrant.org)

Counties Served: Tarrant

TRD-201504093  
Lawrence Hornsby  
General Counsel  
Department of Aging and Disability Services  
Filed: October 1, 2015



**Area Agency on Aging of Texoma**

1117 Gallagher, Suite 200  
Sherman, Texas 75090-3107  
Ph: 903-813-3505 **1-800-677-8264**  
Fax: 903-813-3573

Director:

Ms. Karen Bray, Director  
[kbray@texoma.cog.tx.us](mailto:kbray@texoma.cog.tx.us)

Executive Director:

Texoma Council of Governments  
Dr. Susan B. Thomas, Executive Director  
[stthomas@texoma.cog.tx.us](mailto:stthomas@texoma.cog.tx.us)

Fiscal Director:

Contact:

Terrell Culbertson Rodrigo Moyshondt  
[tculbertson@texoma.cog.tx.us](mailto:tculbertson@texoma.cog.tx.us)

Counties Served: Cooke, Fannin, Grayson

**Area Agency on Aging of West Central TX**

3702 Loop 322  
Abilene, Texas 79602-7300  
Ph: 325-672-8544 **1-800-928-2262**  
Fax: 325-793-8480

Director:

Ms. Michelle Parker Director  
[mparker@wctcog.org](mailto:mparker@wctcog.org)

Executive Director:

West Central Texas Council of Governments  
Mr. Tom K. Smith, Executive Director  
[tsmith@wctcog.org](mailto:tsmith@wctcog.org)

Fiscal Director:

Contact:

Christy Marlar Theresa Edwards  
[cmarlar@wctcog.org](mailto:cmarlar@wctcog.org)

Counties Served: Brown, Callahan, Coleman,  
Comanche, Eastland, Fisher, Haskell, Jones, Kent,  
Knox, Mitchell, Nolan, Runnels, Scurry, Shackelford,  
Stephens, Stonewall, Taylor, Throckmorton

**Texas Department of Agriculture**

2016-2017 Agricultural Inspection Grant Program Request  
for Applications

**Statement of Purpose.**

Pursuant to the Texas Agriculture Code Chapter 12, §12.050, the Texas Department of Agriculture (TDA) is accepting applications for the Agricultural Inspection Grant Program (AIGP). The purpose of AIGP is to promote the agricultural processing industry in this state by reducing wait times for agricultural inspections of vehicles at ports of entry along the border with the United Mexican States.

**Eligibility.**

Subject to available funds, a nonprofit organization is eligible to receive a grant under this chapter if the organization:

- (1) demonstrates experience working with border inspection authorities to reduce border crossing wait times; and
- (2) provides matching funds in the amount of the grant award.

**Funding Parameters.**

Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, Applicants will be informed accordingly.

Applications are limited to a maximum grant award of \$675,000 (not including applicant matching funds) per project/applicant. Project/applicants must provide matching funds, in amount equal to the amount requested. In-kind contributions do not qualify as acceptable matching funds. TDA may not award a grant to the selected non-profit organizations until TDA certifies that the non-profit has the required matching funds.

A grant recipient may use grant money received under this program only to pay for activities directly related to the purpose of the grant program. A grant recipient may use grant money to reimburse a federal governmental agency that, at the request of the grant recipient, provides additional border agricultural inspectors or pays overtime to border agricultural inspectors at ports of entry along the border with the United Mexican States.

**Application Requirements**

Application and information can be downloaded from the Grants Office section under the Grants and Services tab at [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov).

**Submission Information**

Only materials actually *received* by TDA by 5:00 p.m. on Thursday, November 12, 2015 will be reviewed as part of the proposal.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6695 or by email at [Grants@TexasAgriculture.gov](mailto:Grants@TexasAgriculture.gov).

TRD-201504129  
Jessica Escobar  
Assistant General Counsel  
Texas Department of Agriculture  
Filed: October 5, 2015



**2016 Young Farmer Grant Program Request for Application**

**Purpose.**

Pursuant to the Texas Agriculture Code, §58.091, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant (YFG) program. The YFG is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFE). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

TAFE's Young Farmer Grant Program aims to:

- Grow and support Texas agriculture, to avoid having to import products from other states, including deficit commodities;
- Help grow an operation that also impacts the community; and
- Help meet a financial need that is otherwise not met.

**Eligibility.**

Grant applications will be accepted from any person 18 years or older, but younger than 46 years of age as of the time of application, who is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

**Funding Parameters.**

Selected grantees will receive funding for their projects on a cost reimbursement basis. Funds will not be advanced to grantees. Selected grantees must have the financial capability to pay all costs upfront.

The TAFE Board of Directors (Board) anticipates total funding of \$150,000 will be available for grant awards of not less than \$5,000 and no more than \$10,000 for each grantee selected to receive an award under the program.

The TAFE Board reserves the right to fully or partially fund any particular grant application. The grant award does not include required Grantee Matching Funds. Grantees will be required to meet a 1:1 match. For every dollar requested, the grantee must show expenditure, prior to reimbursement, of at least an equal amount of Grantee Matching Funds from allowable sources. Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, applicants will be informed accordingly.

**Application Requirements:**

To be considered, applications must be complete and submitted on Form GTBD-108. An application and information can be downloaded from TDA's Grants Office under the Grants and Services tab at [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov).

The complete application packet including the proposal with signatures must be *received* by Tuesday, November 3, 2015.

For questions regarding submission of the proposal and/or TDA requirements, please contact the Grants Office at (512) 463-6908 or by email at [Grants@TexasAgriculture.gov](mailto:Grants@TexasAgriculture.gov).

**Texas Public Information Act.**

Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201504128  
Jessica Escobar  
Assistant General Counsel  
Texas Department of Agriculture  
Filed: October 5, 2015



**Office of the Attorney General**

**Notice of Settlement of a Texas Water Code Enforcement Action**

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the pub-

lic to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the law.

Case Title: *State of Texas v. BP Exploration & Production Inc., et al.*, Case No. 13-cv-4677 consolidated with MDL No. 2179, in the U.S. District Court for the Eastern District of Louisiana.

Background: On April 20, 2010, explosions and fires destroyed the Mobile Offshore Drilling Rig ("MODU") *Deepwater Horizon* at the site of the Macondo Well, approximately 50 miles from the Mississippi River delta. Eleven people aboard the rig lost their lives; many others were injured. Oil from the Macondo Well flowed into the Gulf of Mexico for months. Oil from the well entered into Texas territorial waters and upon its coastline, causing harm to the coastal area, the estuarine environment and native species, both within Texas waters and migrating to and from Texas waters.

The State of Texas filed a lawsuit against BP Exploration & Production Inc. ("BPXP"), the company that owned and operated the Macondo Well, and associated companies. The lawsuit alleged violations of federal and state law, including the Texas Water Code and the Texas Natural Resources Code.

Nature of the Settlement: The lawsuit against BPXP and associated companies is to be settled by a Consent Decree in the U.S. District Court, a related Economic Claims Settlement Agreement, and an agreed dismissal of all remaining claims.

Proposed Settlement: The proposed Consent Decree provides for (1) the payment of civil penalties under the federal Clean Water Act, of which at least \$430 million is expected to be directed to projects in Texas in accordance with the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States ("RESTORE") Act; (2) restoration of injured and damaged natural resources, with approximately \$238 million directed to projects in Texas; (3) guarantees of payment by BPXP's parent companies; (4) injunctive relief, and (5) other matters. Restoration of damaged natural resources will be done according to a final restoration plan developed by the Deepwater Horizon Oil Spill Trustees Council, composed of the five gulf states and federal Natural Resource Trustees, pursuant to applicable law and regulations.

The proposed Economic Claims Settlement Agreement provides for the payment of \$150 million to Texas, with guarantees by BPXP's parent companies, and other matters. A separate order provides for the payment of \$1 million in attorneys' fees.

The Office of the Attorney General will accept written comments relating to the proposed settlement for thirty (30) days from the date of publication of this notice. Copies of the proposed settlement documents may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. Copies may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the settlement, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General (MC-066), P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0911; email [Thomas.Edwards@texasattorneygeneral.gov](mailto:Thomas.Edwards@texasattorneygeneral.gov).

TRD-201504132

Amanda Crawford  
General Counsel

Office of the Attorney General  
Filed: October 5, 2015

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## Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Quick Shop, Inc., d/b/a King Tobacco; Cause No. D-1-GN-14-002559*; in the 345th Judicial District Court, Travis County, Texas.

Background: This matter concerns a former gasoline station located at 8095 College Street in Beaumont, Jefferson County, Texas (the Site), owned by the Defendant, Quick Shop, Inc. (Quick Shop). The State initiated this matter on behalf of the Texas Commission on Environmental Quality (TCEQ) to enforce a TCEQ administrative order and TCEQ rules regarding the permanent removal from service of the USTs at the Site. Quick Shop removed the USTs at the Site from service, but failed to complete the required site assessment and remediation of the Site. The parties propose an Agreed Final Judgment, which includes a permanent injunction addressing Quick Shop's remedial obligations and civil penalties for violations of the TCEQ order and rules.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction, which provides for an award to the State against Quick Shop 1) unpaid administrative penalties in the amount of \$21,135; 2) civil penalties in the amount of \$2,500; and 3) State's reasonable attorney's fees. Quick Shop is to timely complete the remediation and closure of the Site in accordance with TCEQ's rules.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. The proposed judgment may be examined at the Environmental Protection Division, Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas and copies may be obtained in person or by mail for the cost of copying. A copy is also lodged with the Travis County District Court. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Craig J. Pritzlaff, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201504122

Amanda Crawford  
General Counsel

Office of the Attorney General  
Filed: October 5, 2015

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/12/15 - 10/18/15 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 10/12/15 - 10/18/15 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005<sup>3</sup> for the period of 10/01/15 - 10/31/15 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 10/01/15 - 10/31/15 is 18% for Commercial over \$250,000.

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

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

<sup>3</sup> For variable rate commercial transactions only.

TRD-201504146

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 6, 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 November 16, 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 November 16, 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: Archdiocese of Galveston-Houston; DOCKET NUMBER: 2015-0826-PWS-E; IDENTIFIER: RN101195659; LOCATION: Plantersville, Grimes County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends a minimum of three feet from the well casing in all directions with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with

an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(j), by failing to use all chemicals and any additional or replacement process media for treatment of water supplied by the facility that conforms to the American National Standards Institute/National Sanitation Foundation standards; 30 TAC §290.42(e)(3)(D), by failing to provide disinfection facilities for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use; 30 TAC §290.43(d)(2), by failing to provide the facility's pressure tank with a pressure release device; 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.46(h), by failing to maintain a supply of calcium hypochlorite on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service; 30 TAC §290.46(m)(1)(B) and (n)(2), by failing to inspect the facility's pressure tank annually and failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be located during emergencies; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual within the distribution system with a colorimeter, spectrophotometer, or with the written permission of the executive director, a color comparator; and 30 TAC §290.42(i), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: \$2,110; Supplemental Environmental Project offset amount of \$1,688; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: B and J Excavating, Incorporated; DOCKET NUMBER: 2015-1063-WQ-E; IDENTIFIER: RN105684070; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(b), by failing to register the site as an APO no later than 10 business days before the beginning date of regulated activities; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: City of Henderson; DOCKET NUMBER: 2014-1718-MWD-E; IDENTIFIER: RN101612679; LOCATION: Henderson, Rusk 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 (TPDES) Permit Number WQ0010187001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010187001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: \$29,625; ENFORCEMENT COORDINATOR: Chris Bost, (512) 239-4575; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Italy; DOCKET NUMBER: 2015-0944-MWD-E; IDENTIFIER: RN102336310; LOCATION: Italy, Ellis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014195001, Permit Conditions Number 2.g., by failing to prevent

the unauthorized discharge of wastewater into or adjacent to any water in the state; and 30 TAC §305.125(1) and TPDES Permit Number WQ0014195001, Operational Requirements Number 3.b., by failing to submit a Closure Plan to the Municipal Permits Team for any closure activity at least 90 days prior to conducting such activity; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Needville; DOCKET NUMBER: 2015-1202-MWD-E; IDENTIFIER: RN103016408; LOCATION: Needville, Fort Bend 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 WQ0010343001, Effluent Limitations and Monitoring Requirements Number 1., by failing to comply with permitted effluent limitations; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of San Augustine; DOCKET NUMBER: 2015-1136-PWS-E; IDENTIFIER: RN103779302; LOCATION: San Augustine, San Augustine 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: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: City of Shallowater; DOCKET NUMBER: 2015-0792-PWS-E; IDENTIFIER: RN101218980; LOCATION: Shallowater, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 30 micrograms per liter for uranium, based on the running annual average; PENALTY: \$202; ENFORCEMENT COORDINATOR: Farhaudd Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(8) COMPANY: City of Stanton; DOCKET NUMBER: 2015-1052-PWS-E; IDENTIFIER: RN101392082; LOCATION: Stanton, Martin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic, based on the running annual average; PENALTY: \$195; ENFORCEMENT COORDINATOR: Epi Villareal, (361) 825-3425; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(9) COMPANY: CJF FAMILY, INCORPORATED dba Smile Mart; DOCKET NUMBER: 2015-0922-PST-E; IDENTIFIER: RN102380722; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$10,125; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Crawdad's, Incorporated; DOCKET NUMBER: 2015-0843-PST-E; IDENTIFIER: RN105448823; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.244(1)

and (3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(d)(3)(C) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; PENALTY: \$7,478; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: JAE'S ALL SEASONS MARKET, INCORPORATED dba Jaes All Season 2; DOCKET NUMBER: 2015-1031-PST-E; IDENTIFIER: RN102390242; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Mitha Enterprises, LLC dba Cypress Plaza 3; DOCKET NUMBER: 2015-1068-PST-E; IDENTIFIER: RN101444503; LOCATION: Orange, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: NEW NGC, INCORPORATED; DOCKET NUMBER: 2015-0783-WQ-E; IDENTIFIER: RN101294973 (Rotan Gypsum Plant) and RN105854335 (Rotan Quarry); LOCATION: Rotan, Fisher County (Gypsum Plant) and Stonewall County (Quarry); TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued (Rotan Gypsum Plant and Rotan Quarry); PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: PAPPY'S SAND and GRAVEL, INCORPORATED; DOCKET NUMBER: 2015-0854-WQ-E; IDENTIFIER: RN100786698; LOCATION: Scurry, Kaufman County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Farhaudd Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Paul Mauricio, Sr.; DOCKET NUMBER: 2015-0921-PST-E; IDENTIFIER: RN105528111; LOCATION: Devine, Medina County; TYPE OF FACILITY: property with three inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.49(a)(1) and TWC, §26.3475(d), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements and failing to provide corrosion protection for the UST system; and 30 TAC §334.7(a)(1) and TWC, §26.346, by failing to register with the commission, on



authorized agency forms, USTs in existence on or after September 1, 1987; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: R and S Stone, Incorporated; DOCKET NUMBER: 2015-0936-WQ-E; IDENTIFIER: RN105736656; LOCATION: Lueders, Haskell County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(17) COMPANY: Ranger Ready Mix, LLC; DOCKET NUMBER: 2015-0906-MLM-E; IDENTIFIER: RN106919822; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §213.4(a)(1) and §213.5(a)(4), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing regulated activities over the Edwards Aquifer Recharge and Transition Zones; and 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; PENALTY: \$29,506; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(18) COMPANY: Regency Field Services LLC; DOCKET NUMBER: 2015-0707-AIR-E; IDENTIFIER: RN100217843; LOCATION: McCamey, Crockett County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§116.115(b)(2)(F) and (c), 116.615(2), and 122.143(4), Federal Operating Permit Number O3190, Special Terms and Conditions Number 11, Standard Permit Registration Number 107048, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$11,475; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(19) COMPANY: Rentech Nitrogen Pasadena, LLC; DOCKET NUMBER: 2015-0493-AIR-E; IDENTIFIER: RN101621944; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1252, Special Terms and Conditions Number 11, and New Source Review Permit Number 56361, Special Conditions Number 1, by failing to comply with maximum allowable hourly emissions rate; PENALTY: \$65,250; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: S.S.G. FUEL SERVICE, INCORPORATED dba King Shell; DOCKET NUMBER: 2015-0753-PWS-E; IDENTIFIER: RN101268472; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (f), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of November 2014 - February 2015 and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the months of November 2014 and December 2014; 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the July 1, 2012 - December

31, 2012 monitoring period; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the months of June 2014 and July 2014; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees, including late fees, for TCEQ Financial Administration Account Number 91013196 for Fiscal Year 2015; PENALTY: \$1,974; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Sid Richardson Carbon, Limited; DOCKET NUMBER: 2015-0522-AIR-E; IDENTIFIER: RN100222413; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: carbon black manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(2) and §122.143(4), Federal Operating Permit (FOP) Number O1414, Special Terms and Conditions (STC) Number 2F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a complete and accurate initial notification within 24 hours after discovery of the emissions event; and 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), THSC, §382.085(b), FOP Number O1414, STC Number 6, and New Source Review Permit Numbers 1867A and PSDTX1032, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$87,475; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(22) COMPANY: SUNWELL CORPORATION dba Redi-Fuel; DOCKET NUMBER: 2015-0871-PST-E; IDENTIFIER: RN105023568; LOCATION: San Antonio, Bexar County; 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 covered by a valid, current TCEQ delivery certificate; PENALTY: \$2,485; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: TRIPLE R DIESEL SERVICE, INCORPORATED; DOCKET NUMBER: 2015-0506-MLM-E; IDENTIFIER: RN102845450; LOCATION: Atascosa, Bexar County; TYPE OF FACILITY: custom build and repair shop for semi-trucks; RULES VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; 30 TAC §§335.62, 335.503 and 335.504 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations for waste at the facility; 30 TAC §328.58(a), by failing to maintain a record of each individual load of used or scrap tires or tire pieces transported from the facility; 30 TAC §324.1 and §324.4(1) and 40 CFR §279.22(d), by failing to prevent the disposal of used oil on the ground; 30 TAC §324.6 and 40 CFR §279.22(c), by failing to mark or clearly label used oil storage containers with the words "Used Oil;" 30 TAC §324.6 and 40 CFR §264.173(a) and §279.22(a), by failing to keep containers containing used oil closed except for when adding or removing used oil; and 30 TAC §328.25 and §324.6, by failing to maintain used oil filters and used oil records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$30,100; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Unger Texas Stone, LP; DOCKET NUMBER: 2015-0939-WQ-E; IDENTIFIER: RN105291447; LOCATION: Lueders, Shackelford County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities

continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(25) COMPANY: Village of Surfside Beach; DOCKET NUMBER: 2015-0710-PWS-E; IDENTIFIER: RN101175859; LOCATION: Surfside Beach, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(D) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory and submit the results to the executive director for the January 1, 2002 - December 31, 2010 monitoring period; 30 TAC §290.117(c)(2)(B) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory and submit the results to the executive director for the 2011, 2013 and 2014 monitoring periods and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect lead and copper samples for the 2014 monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the years 2012 and 2013; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the notification to the executive director regarding the failure to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director for the third quarter of 2013 and regarding the failure to collect all required repeat coliform samples for the month of September 2012; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a DLQOR to the executive director each quarter by the tenth day of the month following the end of each quarter for the third and fourth quarters of 2014; and 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample for the month of September 2012 and failing to provide public notification and provide a copy of the notification to the executive director regarding the failure to collect raw groundwater source samples following notification of a coliform-positive result for the month of September 2012; PENALTY: \$1,528; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: William Donald Smith; DOCKET NUMBER: 2015-1061-MWD-E; IDENTIFIER: RN101701555; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013770001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(7) and §305.126(b) and TPDES Permit Number WQ0013770001, Permit Conditions Number 4.a., by failing to give notice to the executive director before physical alterations or additions were made to the facility; and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0013770001, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: \$9,375; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201504141

Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: October 6, 2015



### Notice of a Proposed Renewal with Amendment of a General Permit Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to renew and amend Texas Pollutant Discharge Elimination System General Permit TXG130000. This general permit authorizes discharges into or adjacent to water in the state by aquaculture facilities and other activities related to aquaculture. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

**PROPOSED GENERAL PERMIT.** The executive director has prepared a draft general permit renewal with amendments of an existing general permit that authorizes discharges into or adjacent to water in the state by aquaculture facilities and other activities related to aquaculture. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require certain dischargers to submit a Notice of Intent to obtain authorization to discharge.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Advisory Committee regulations and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's 16 regional offices and on the TCEQ website at <http://www.tceq.texas.gov/permitting/wastewater/general/index.html>.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/about/comments.html](http://www.tceq.texas.gov/about/comments.html) within 30 days from the date this notice is published in the *Texas Register*.

**APPROVAL PROCESS.** After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commissioners' action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of

the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

**INFORMATION.** If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at: <http://www.tceq.texas.gov>.

Further information may also be obtained by calling Laurie Fleet of the TCEQ Water Quality Division at (512) 239-5445.

*Si desea información en español, puede llamar (800) 687-4040.*

TRD-201504140

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 6, 2015



#### Notice of a Public Meeting and a Proposed Renewal with Amendment of a General Permit Authorizing the Discharge of Stormwater Associated with Industrial Activities

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to renew and amend the Texas Pollutant Discharge Elimination System Permit Number TXR050000, authorizing the discharge of stormwater and certain non-stormwater discharges from industrial activities into surface water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

**PROPOSED GENERAL PERMIT.** The executive director has prepared a proposed general permit with amendments to the existing general permit authorizing the discharge of stormwater and certain types of non-stormwater from industrial activities that are grouped into 30 similar sectors based on Standard Industrial Classification Codes and Industrial Activity Codes. The proposed changes to the general permit are included in the proposed general permit and described in the fact sheet.

The proposed general permit specifies which facilities must obtain permit coverage, which are eligible for a conditional exclusion based on no exposure of industrial activity to stormwater, which are designated as eligible for coverage without submitting a notice of intent, and which must obtain individual permit coverage. Non-stormwater discharges that are not specifically listed in the general permit are not authorized by the general permit. No significant degradation of high quality waters is expected and existing water uses will be maintained and protected.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP), according to General Land Office regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the Austin office, at 12100 Park 35 Circle, Building F. These doc-

uments are also available at the TCEQ's 16 regional offices and on the TCEQ website at [http://www.tceq.texas.gov/permitting/stormwater/sw\\_permits.html](http://www.tceq.texas.gov/permitting/stormwater/sw_permits.html).

**PUBLIC COMMENT AND PUBLIC MEETING.** You may submit public comments about this general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the general permit. A public meeting is not a contested case hearing.

The public meeting will be held at **1:30 p.m., November 16, 2015**, in TCEQ's complex at 12100 Park 35 Circle, Building E, Room 201S, Austin.

Written public comments must be received by 5:00 p.m. on **November 16, 2015**. Written comments may be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www.tceq.texas.gov/about/comments.html>.

**APPROVAL PROCESS.** After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten days before the scheduled commission's agenda meeting when the commission will consider approval of the general permit. The commission will consider all public comments in making its decision and will either adopt the executive director's response or prepare its own response to the comments. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commissioners' action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

**INFORMATION.** If you need more information about the proposed general permit 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 website at <http://www.tceq.texas.gov>.

Further information may also be obtained by calling the TCEQ's Water Quality Division, Stormwater and Pretreatment Team, at (512) 239-4671.

*Si desea información en español, puede llamar 1-800-687-4040.*

TRD-201504139

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 6, 2015



Notice of Correction to Agreed Order Number 13

In the October 2, 2015, issue of the *Texas Register* (40 TexReg 6955), the Texas Commission on Environmental Quality published notice of an Agreed Order, specifically item Number 13, for Divine Hauling, LLC. The reference to location should be corrected to read: Houston and Pasadena, Harris County.

For questions concerning this error, please contact Candy Garrett at (512) 239-1456.

TRD-201504142

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 6, 2015



### Notice of Water Quality Application

The following notice was issued on September 30, 2015.

The following does 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.

#### INFORMATION SECTION

Montgomery County Municipal Utility District No. 89 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0013985001 to authorize a reduction in the permitted flow from 500,000 gallons per day to 380,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 29722-1/2 Legends Ridge Drive #2, in Spring, approximately 5,200 feet north of the intersection of Riley Fuzzell Road and Rayford Road, in Montgomery County, Texas 77386.

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-201504175

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 7, 2015



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on September 29, 2015, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Keywinn Development, LLC, Respondent; SOAH Docket No. 582-14-4716; TCEQ Docket No. 2013-1653-MSW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Keywinn Development, LLC on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin,

Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201504174

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 7, 2015



## Texas Facilities Commission

### Request for Proposals #303-6-20520

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-6-20520. TFC seeks a five (5) or ten (10) year lease of approximately 2,224 square feet of office space in Brownwood, Texas.

The deadline for questions is October 26, 2015, and the deadline for proposals is November 9, 2015 at 3:00 p.m. The award date is December 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=120357](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=120357).

TRD-201504094

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 1, 2015



## General Land Office

### Amended Notice of Invitation for Offer for Renewal of Major Consulting Services

This notice amends and replaces the notice published in the August 28, 2015, issue of the *Texas Register* (40 TexReg 5514).

The Texas General Land Office (GLO) is seeking a consultant to provide services related to the Texas Coastal Ocean Observation Network (TCOON). The consultant will review tide and water level data generated by the TCOON tide gauges and submitted to the National Oceanic and Atmospheric Administration (NOAA) to prove that the data was collected in accordance with NOAA's standards and procedures. Data from the TCOON stations is used to identify the boundary between state and private ownership of submerged land, for approving coastal erosion and beach nourishment projects, for calculating acreage of submerged land tracts for mineral leasing, for identifying and defining the public beach, and for modeling oil spill projections.

Pursuant to §2254.031 of the Texas Government Code, the GLO is seeking to renew its contract for consulting services relating to the review and verification of tide and water level data from TCOON stations for the period beginning November 16, 2015, and ending on August 31, 2017. Pursuant to §2254.029 of the Texas Government Code, the GLO is posting this notice in the *Texas Register* as an invitation for consultants to provide offers for these consulting services. The requested consulting services consist of the following tasks:

1. Maintain communications with the GLO and NOAA concerning the overall quality of the TCOON water level data.
2. Process TCOON water level stations on all active TCOON stations, currently 31 stations, for state fiscal years 2016-2017.
  - a. Generates a monthly summary of times and heights of high and low waters and hourly heights for each station.
  - b. Creates the water level Monthly Means database, i.e. Monthly Mean High Water, Monthly Mean Sea Level.
3. Verify field elevation entries and conduct quality control quality assurance (QC/QA) on all levels at TCOON water level stations.
4. Monitor bench mark stability and check the number of marks at each active station and notify the GLO when there are less than 5 good marks.
5. Compute accepted values for each bench mark for all TCOON stations that have a minimum of ten sets of levels and compute accepted values for new Primary Bench Marks (PBM).
  - a. Required for tracking the stability of the acoustic sensor.
  - b. Required for computing datums.
6. Assist in developing new tools to improve the TCOON data quality and automation of QC/QA procedures, such as, break filling, spike detection, bench mark stability analysis, and detection of datum shifts.
7. Identify and update published bench mark information for all TCOON stations where the accepted MSL value changes by 3 cm when compared to a recently computed preliminary datum.
  - a. Review and update documents to identify stations exceeding the 3 cm criteria.
  - b. Conduct MSL Analysis to identify datum shifts or drifts in the data.
  - c. Review the Monthly Means database for Monthly Means that exceed 2 SDEV.
  - d. Compute new published datums for those stations that exceed the 3 cm criteria.
8. Assist in preparing a User's Guide for Processing TCOON Water Level Data and Datum Computations.
9. Coordinate the agendas for quarterly meetings to discuss TCOON station, software, and database issues.
10. Prepare Quarterly Reports.

The GLO will evaluate any offers received based on the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. The GLO reserves the right to accept or reject any or all offers. The closing date for receipt of offers of these consulting services is 5:00 p.m., November 6, 2015.

Mr. Douglas Martin has previously provided these consulting services to the GLO with respect to the TCOON program. Unless a better offer for the provision of such services is received in response to this notice, the GLO intends to award this contract to Mr. Martin.

Further information may be obtained by contacting Craig Davis, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495, telephone (512) 483-8126.

TRD-201504126  
 Anne L. Idsal  
 Chief Clerk and Deputy Land Commissioner  
 General Land Office  
 Filed: October 5, 2015

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## Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that George P. Bush, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated February 5, 2015, by James M. Naismith, Licensed State Land Surveyor, delineating the littoral boundary and limits of filled submerged land owned by the City of Corpus Christi, whose underlying minerals are reserved in the State of Texas, being part of Survey 803 (Refugio Scrip 1913), Corpus Christi Bay, and situated along and seaward of the Bayfront Seawall, extending southerly approximately 1800 feet from it's intersection with the southerly end of the Corpus Christi Marina Breakwater at coordinates N27°47'04"/W97°23'35", WGS84.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact David Pyle, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email [david.pyle@glo.texas.gov](mailto:david.pyle@glo.texas.gov), or fax (512) 463-5229.

TRD-201504127  
 Anne L. Idsal  
 Chief Clerk and Deputy Land Commissioner  
 General Land Office  
 Filed: October 5, 2015

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## Texas Health and Human Services Commission

### Home and Community Based Services Regulation Stakeholder Meetings

The Health and Human Services Commission (HHSC) and Department of Aging and Disability Services (DADS) will be hosting several stakeholder forums at various locations around the state to provide information on federal rules related to Home and Community Based Services (HCBS) settings. The federal rules can be located at <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/home-and-community-based-services.html> (42 CFR 441.301). We are inviting all interested stakeholders and any other interested parties to join us and learn more about the federal rules and how the Texas Statewide Settings Transition Plan (STP) may impact individuals receiving or providing Medicaid services. Interested parties are encouraged to offer comments on all HCBS services delivered under the 1915(c) waiver programs and STAR+PLUS HCBS services delivered under the 1115 Demonstration waiver program and to express any concern regarding compliance with the federal rules. In addition to providing information on the STP and any upcoming revisions, these sessions will outline a process for providing feedback on the new survey tools intended to help us better assess the settings where HCBS services are provided throughout the state.

HHSC recently received initial feedback from the Centers for Medicare & Medicaid (CMS) Services on the STP submitted by HHSC in December 2014 and the first amendment to the STP submitted in March 2015. The feedback received from CMS is available

at <http://medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/statewide-transition-plans.html>. HHSC is in the process of preparing a second amendment to the STP in response to this CMS feedback and will post the proposed amendment and provide an opportunity for comment prior to submission to CMS.

Sessions will be held in the following locations:

San Antonio, October 22, 2015

Lubbock, October 27, 2015

El Paso, October 29, 2015

Harlingen, November 3, 2015

Fort Worth, November 6, 2015

Tyler, November 9, 2015

More details such as the addresses and specific times for the sessions are available at the following websites:

<http://www.hhsc.state.tx.us/medicaid/hcbs/index.shtml>

<http://www.dads.state.tx.us/providers/HCBS/index.cfm>

<https://www.dshs.state.tx.us/mhsa/yes/Centers-for-Medicare-and-Medicaid-Services-HCBS-Rules.aspx>

To obtain free copies of the most recently submitted STP or if you have questions, need additional information, or wish to submit comments regarding the STP, interested parties may contact Jacqueline Pernel by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3247, by phone at (512) 428-1931, by fax at (512) 730-7472, or by email at [TX\\_Medicaid\\_Waivers@hhsc.state.tx.us](mailto:TX_Medicaid_Waivers@hhsc.state.tx.us). Free copies of the STP also will be available at each session. In addition, the STP can be located at <http://www.hhsc.state.tx.us/medicaid/hcbs/index.shtml>.

TRD-201504163

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 6, 2015



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Fee Review of Clinical Laboratory Services - Oncotype DX® Breast Cancer Assay

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Fee Review of Clinical Laboratory Services - Oncotype DX® Breast Cancer Assay.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Clinical Laboratory Services - Oncotype DX® Breast Cancer Assay is proposed to be effective November 1, 2015.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8610, which addresses the reimbursement methodology for clinical laboratory services.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 29, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504176

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 6, 2015



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Healthcare Common Procedure Coding System (HCPCS) Updates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Healthcare Common Procedure Coding System (HCPCS) updates.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the HCPCS updates are proposed to be effective January 1, 2016, for Alemtuzumab (Q9979).

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-pack->

*ets.shtml* on or after October 29, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504178

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2015



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective January 1, 2016, for the following services:

Access to Care

"B" Codes (Enteral supplies)

Medicaid Long-Acting Reversible Contraceptives (LARCs)

Medicaid Family Planning Services (excluding LARCs)

Musculoskeletal System Surgery

"Q" Codes (Physician, DME, and physician-administered drugs)

"R" Codes (Transportation of portable x-ray equipment to home or nursing home, per trip)

Radiopharmaceuticals

Respiratory System Surgery

"T" Codes (Registered nurse services, sign language or oral interpretive services, screening for specified programs, and environmental lead investigation)

Hospital Outpatient Imaging (Q0035)

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps); and

§355.8581, which addresses the reimbursement methodology for family planning services.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packages.shtml> on or after October 29, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504166

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 6, 2015



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Diagnostic and Therapeutic Breast Procedures

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Diagnostic and Therapeutic Breast Procedures.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The

hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Medical Policy Review of Diagnostic and Therapeutic Breast Procedures are proposed to be effective January 1, 2016.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8121, which addresses the reimbursement methodology for ambulatory surgical centers; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 29, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504167

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 6, 2015



### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Magnetoencephalography

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Magnetoencephalography.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which

require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Medical Policy Review of Magnetoencephalography are proposed to be effective January 1, 2016.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 29, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504168

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 6, 2015



### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Pathology and Laboratory Services - Drug Testing and Therapeutic Drug Assays

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Pathology and Laboratory Services - Drug Testing and Therapeutic Drug Assays

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.



**Proposal.** The payment rates for the Medical Policy Review of Pathology and Laboratory Services - Drug Testing and Therapeutic Drug Assays are proposed to be effective November 1, 2015.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8610, which addresses the reimbursement methodology for clinical laboratory services.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 29, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504177

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 7, 2015



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Pathology and Laboratory Services - Microbiology

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Pathology and Laboratory Services - Microbiology.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Medical Policy Review of Pathology and Laboratory Services - Microbiology are proposed to be effective January 1, 2016.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8610, which addresses the reimbursement methodology for clinical laboratory services.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after October 29, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504169

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 6, 2015



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Vision Services Nonsurgical

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 12, 2015, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Vision Services Nonsurgical.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 and 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The payment rates for the Medical Policy Review of Vision Services Nonsurgical are proposed to be effective January 1, 2016.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps); and

§355.8461, which addresses the reimbursement methodology for EPSDT eyeglasses and contact lenses.

**Briefing Package.** A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml>

*ets.shtml* on or after October 29, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). The briefing package will also be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to [RADAcuteCare@hhsc.state.tx.us](mailto:RADAcuteCare@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201504170

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 6, 2015

◆ ◆ ◆  
**Public Notice - Amendment to the Texas State Plan for Medical Assistance Effective November 1, 2015**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective November 1, 2015.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting or implementing fees for:

Clinical Laboratory Services

Durable Medical Equipment, Prosthetics, Orthotics and Supplies;

Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT);

Home Health Services; and

Physicians and Other Practitioners

All of the proposed adjustments are being made in accordance with 1 TAC §355.201.

The proposed amendment is estimated to result in an annual cost of \$5,047,296 for federal fiscal year (FFY) 2016, consisting of \$2,883,520 in federal funds and \$2,163,776 in state general revenue. For FFY 2017, the estimated annual expenditure is \$5,751,171, consisting of \$3,259,189 in federal funds and \$2,491,982 in state general revenue. For FFY 2018, the estimated annual expenditure is \$6,007,340, consisting of \$3,404,360 in federal funds and \$2,602,980 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at

[dan.huggins@hhsc.state.tx.us](mailto:dan.huggins@hhsc.state.tx.us). Free copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201504121

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 5, 2015

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application to change the name of WOODRIDGE INSURANCE COMPANY to SPINNAKER INSURANCE COMPANY, a fire and/or casualty company. The home office is in Chester, New Jersey.

Application for admission to the State of Texas by AMERICAN CAPITAL ASSURANCE CORP, a foreign life, fire and/or casualty company. The home office is in St. Petersburg, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201504181

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: October 6, 2015

◆ ◆ ◆  
**Correction of Error**

The Texas Department of Insurance proposed amendments to 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4190; the repeal of §§5.4126 - 5.4128, 5.4142, 5.4143, and 5.4145 - 5.4149; and new §§5.4126, 5.4127, 5.4142, 5.4143, 5.4145, and 5.4912 in the October 9, 2015, issue of the *Texas Register* (40 TexReg 7020). Two errors appear in the preamble of the proposed rulemaking:

On page 7021, second column, sixth paragraph, "\$5.4124(d)" should be "\$5.4124(e)". The paragraph should read as follows:

"Proposed §5.4124(e) also clarifies what public security proceeds are considered depleted...."

On page 7022, second paragraph, "\$5.4124(d)" should be "\$5.4125(d)". The paragraph should read as follows:

"Proposed §5.4125(d) also clarifies what public security proceeds are considered depleted...."

TRD-201504164

◆ ◆ ◆  
**Texas Department of Licensing and Regulation**

**Notice of Vacancies on Dietitians Advisory Board**

The Texas Department of Licensing and Regulation (Department) announces three 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. This announcement is for the three members who represent the public.

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 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

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.

(2) three members who represent the public.

Members serve staggered six-year terms. The terms of three members begin on September 1 of each odd-numbered year.

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-201504187  
Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



#### Notice of Vacancies on Hearing Instrument Fitters and Dispensers Advisory Board

The Texas Department of Licensing and Regulation (Department) announces three 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. This announcement is for a physician specializing in the practice of otolaryngology and two public members.

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.

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-201504190  
Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



#### Notice of Vacancies on Orthotists and Prosthetists Advisory Board

The Texas Department of Licensing and Regulation (Department) announces two 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. This announcement is for two public members: one who uses an orthosis and one who uses a prosthesis.

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.

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-201504191  
Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



#### Notice of Vacancy on Driver Training and Traffic Safety Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces a vacancy 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. This announcement is for a public member.

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.

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-201504188  
Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



#### Notice of Vacancy on Speech-Language Pathologists and Audiologists Advisory Board

The Texas Department of Licensing and Regulation (Department) announces a vacancy 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. This announcement is for a public member.

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.

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-201504192  
Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



#### Vacancies on Advisory Board on Barbering

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Advisory Board on Barbering (Board) established by Texas Occupations Code, Chapter 1601. The pertinent rules may be found in 16 TAC §82.65. The purpose of the Advisory Board on Barbering is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to barbering; and other issues affecting barbering. This announcement is for one member who is barbershop owner and holds barbershop permits and one member who holds a permit to conduct or operate a barber school.

The Board is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of:

- (1) two members who are engaged in the practice of barbering as a Class A barber and do not hold a barbershop permit;
- (2) two members who are barbershop owners and hold barbershop permits; and
- (3) one member who holds a permit to conduct or operate a barber school.

Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

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-201504183

Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



#### Vacancies on Advisory Board on Cosmetology

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Advisory Board on Cosmetology (Board) established by Texas Occupations Code, Chapter 1602. The pertinent rules may be found in 16 TAC §83.65. The purpose of the Advisory Board on Cosmetology is to advise the Commission and department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to cosmetology; and other issues affecting cosmetology. This announcement is for one member who holds a private beauty culture school license and a public member.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of:

- (1) one member who holds a license for a beauty shop that is part of a chain of beauty shops;
- (2) one member who holds a license for a beauty shop that is not part of a chain of beauty shops;
- (3) one member who holds a private beauty culture school license;
- (4) two members who each hold an operator license;
- (5) one member who represents a licensed public secondary or post secondary beauty culture school;
- (6) one member who represents a licensed public secondary beauty culture school; and
- (7) two public members.

Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

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-201504182

Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



#### Vacancies on Architectural Barriers Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces three vacancies on the Architectural Barriers Advisory Committee (Committee) established by Texas Government Code, Chapter 469. The pertinent rules may be found in 16 TAC §68.65. The purpose of the Architectural Barriers Advisory Committee is to advise the Texas Commission of Licensing and Regulation (Commission) in adopting

rules relating to the elimination of architectural barriers program. This announcement is for one position of a person with a disability and two building professionals who are familiar with architectural barrier problems and solutions.

The Committee is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of:

- (1) building professionals; and
- (2) persons with disabilities;

who are familiar with architectural barrier problems and solutions. Members serve at the will of the Commission. Persons with disabilities must make up the majority of the committee.

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-201504185

Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



#### Vacancies on Auctioneer Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces six vacancies on the Auctioneer Advisory Committee (Committee) established by Texas Occupations Code, Chapter 1802. The pertinent rules may be found in 16 Texas Administrative Code §67.65. The purpose of the Auctioneer Advisory Committee is to advise the Texas Commission of Licensing and Regulation (Commission) on educational matters, operational matters, and common practices within the auction industry. This announcement is for the six positions listed below.

The Committee is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval.

- (1) Four members are licensed auctioneers;
- (2) one member is the administrative head, or the administrative head's designee, of any state agency or office that is selected by the Commission; and
- (3) two public members.

The auctioneer members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1 and may not serve more than two consecutive terms.

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-201504184

Brian Francis  
Deputy Executive Director  
Texas Department of Licensing and Regulation  
Filed: October 7, 2015



## Vacancy on Athletic Trainers Advisory Board

The Texas Department of Licensing and Regulation (Department) announces a vacancy 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. This announcement is for a public member.

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:

- (1) three athletic trainers; and
- (2) 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.

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-201504186

Brian Francis

Deputy Executive Director

Texas Department of Licensing and Regulation

Filed: October 7, 2015

## **Texas Lottery Commission**

### Scratch Ticket Game Number 1730 "Lucky Gems Bingo"

#### 1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1730 is "LUCKY GEMS BINGO". The play style is "bingo".

#### 1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1730 shall be \$2.00 per Ticket.

#### 1.2 Definitions in Scratch Ticket Game No. 1730.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE SYMBOL, GEM SYMBOL and DIAMOND SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have play symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1730 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
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N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
G52	
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74	
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FREE SYMBOL	
GEM SYMBOL	
DIAMOND SYMBOL	

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$9.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1730), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1730-0000001-001.

K. Pack - A Pack of the "LUCKY GEMS BINGO" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). There will be 2 fanfold configurations for this game. A will show the front of Ticket 001 and the back of ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "LUCKY GEMS BINGO" Scratch Ticket Game No. 1730.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LUCKY GEMS BINGO" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 127 (one hundred twenty-seven) Play Symbols. LUCKY GEMS BINGO PLAY INSTRUCTIONS: The player scratches the "CALLER'S CARD" to reveal 27 Bingo Numbers. The player scratches only those Bingo Numbers on the four (4) "BINGO CARDS" that match the "CALLER'S CARD" Bingo Numbers. The player also scratches the "FREE" spaces. If a player matches all Bingo Numbers in a complete vertical, horizontal or diagonal line; all Bingo

Numbers in all four (4) corners; or all Bingo Numbers to complete an "X" [eight (8) Bingo Numbers plus the "FREE" space] on the same "BINGO CARD", the player wins the prize in the corresponding prize legend for that "BINGO CARD". BONUS PLAY: The "GEM" and "DIAMOND" Play Symbols on the four (4) "BINGO CARDS" can be used as "FREE" spaces to complete a winning combination. If a winning combination includes a "GEM" Play Symbol, the player wins DOUBLE the prize won for that "BINGO CARD". If a winning combination includes a "DIAMOND" Play Symbol, the player wins TRIPLE the prize won for that "BINGO CARD". No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 127 (one hundred twenty-seven) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 127 (one hundred twenty-seven) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 127 (one hundred twenty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 127 (one hundred twenty-seven) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. A Ticket can win up to four (4) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol patterns. Two (2) Tickets have matching Play Symbol patterns if they have the same Play Symbols in the same spots.

C. The "DIAMOND" Play Symbol will not appear in the same spot as another "DIAMOND" Play Symbol on another "BINGO CARD" on the same Ticket.

D. The "GEM" Play Symbol will not appear in the same spot as another "GEM" Play Symbol on another "BINGO CARD" on the same Ticket.

E. No individual "BINGO CARD" will win more than one (1) prize (i.e., only highest prize paid per "BINGO CARD").

F. All "BINGO CARDS" will be different on a Ticket. Two "BINGO CARDS" are matching if they have the same Play Symbols in the same positions.

G. The Bingo Numbers within the "CALLERS CARD" will all be different.

H. All Tickets will have all of the "CALLER'S CARD" Bingo Numbers within the "CALLER'S CARD" reveal a number in at least one "BINGO CARD".

I. There will be one (1) "FREE" Play Symbol fixed in the center of each "BINGO CARD".

J. One (1) "GEM" Play Symbol and one (1) "DIAMOND" Play Symbol will appear on every "BINGO CARD".

K. The "GEM" Play Symbol and the "DIAMOND" Play Symbol will never appear in the same horizontal, vertical or diagonal line on the same "BINGO CARD".

L. The "GEM" Play Symbol and the "DIAMOND" Play Symbol will never appear in a corner position of a "BINGO CARD".

M. The "GEM" Play Symbol and the "DIAMOND" Play Symbol will never appear in one of the positions within the "X" pattern on a "BINGO CARD".

N. The number range used for each letter (B, I, N, G, O) will be as follows: B (01-15), I (16-30), N (31-45), G (46-60), O (61-75).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY GEMS BINGO" Scratch Ticket Game prize of \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$9.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY GEMS BINGO" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY GEMS BINGO" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "LUCKY GEMS BINGO" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "LUCKY GEMS BINGO" Scratch Ticket

Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 15,600,000 Scratch Tickets in Scratch Ticket Game No. 1730. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1730 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,497,600	10.42
\$3	499,200	31.25
\$4	374,400	41.67
\$5	374,400	41.67
\$6	374,400	41.67
\$9	124,800	125.00
\$10	124,800	125.00
\$15	124,800	125.00
\$20	124,800	125.00
\$30	19,500	800.00
\$50	19,500	800.00
\$100	10,920	1,428.57
\$500	975	16,000.00
\$1,000	54	288,888.89
\$30,000	8	1,950,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.25. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1730 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1730, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201504179  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 7, 2015



Scratch Ticket Game Number 1778 "Break the Bank"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1778 is "BREAK THE BANK". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1778 shall be \$2.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1778.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, MONEY STACK SYMBOL, \$2.00, \$4.00, \$6.00, \$10.00, \$20.00, \$50.00, \$200, \$1,000, \$3,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1778 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
MONEY STACK SYMBOL	WIN
\$2.00	TWO\$
\$4.00	FOUR\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUN
\$1,000	ONE THOU
\$3,000	THR THOU
\$30,000	30 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$1,000, \$3,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1778), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1778-0000001-001.

K. Pack - A Pack of the "BREAK THE BANK" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded

in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "BREAK THE BANK" Scratch Ticket Game No. 1778.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BREAK THE BANK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 19 (nineteen) Play Symbols. If any of YOUR NUMBERS Play Symbols match any of the 3 LUCKY NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "MONEY STACK" Play Symbol, the player wins the prize for that symbol in-

stantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut and have exactly 19 (nineteen) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 19 (nineteen) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

D. No matching LUCKY NUMBERS Play Symbols on a Ticket.

E. There will be no correlation between the matching Play Symbols and the prize amount.

F. The "MONEY STACK" (WIN) Play Symbol will never appear more than once on a Ticket.

G. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBER Play Symbol (i.e., 10 and \$10).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Scratch Ticket Game prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$200 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Scratch Ticket Game prize of \$1,000, \$3,000 or \$30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form

with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "BREAK

THE BANK" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "BREAK THE BANK" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 25,200,000 Scratch Tickets in Scratch Ticket Game No. 1778. The approximate number and value of prizes in the game are as follows:



Figure 2: GAME NO. 1778 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	2,469,600	10.20
\$4	1,461,600	17.24
\$6	403,200	62.50
\$8	100,800	250.00
\$10	252,000	100.00
\$12	302,400	83.33
\$20	151,200	166.67
\$50	93,450	269.66
\$200	17,535	1,437.13
\$1,000	525	48,000.00
\$3,000	130	193,846.15
\$30,000	16	1,575,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1778 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1778, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201504171  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: October 6, 2015

◆ ◆ ◆  
**Texas Parks and Wildlife Department**

Notice of Proposed Real Estate Transaction

**Acceptance of Land Donation - Cameron County**

**Boca Chica State Park**

In a meeting on November 5, 2015 the Texas Parks and Wildlife Commission (the Commission) will consider accepting the donation of several tracts of land totaling approximately 15 acres within the Boca Chica State Park in Cameron County. At this meeting, the public

will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

TRD-201504118  
 Ann Bright  
 General Counsel  
 Texas Parks and Wildlife Department  
 Filed: October 2, 2015

◆ ◆ ◆  
**Public Utility Commission of Texas**

Notice of Application for Regulatory Approvals

Notice is given to the public of an application by Oncor Electric Delivery Company LLC (Oncor), Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC (collectively, Applicants), filed with the Public Utility Commission of Texas (Commission) on September 29, 2015, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. Sections 14.101, 37.154, 39.262 and 39.915 (West 2007 & Supp. 2014) (PURA).

Docket Style and Number: Joint Report and Application of Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC for Regulatory Approvals Pursuant to PURA §§14.101, 37.154, 39.262(l)-(m), and 39.915, Docket Number 45188.

The Application: Oncor Electric Delivery Company LLC (Oncor), Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary

Holdings, LLC seek regulatory approvals of a proposed transaction that contemplates Ovation's acquisition of an indirect majority interest in Oncor and reorganization of Oncor through a joint survivor merger under Chapter 10 of the Texas Business Organizations Code and certain other transactions.

Persons who wish to intervene in or comment upon this application should notify the Public Utility Commission of Texas. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene is October 30, 2015. All correspondence should refer to Docket Number 45188.

TRD-201504099  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 1, 2015



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 30, 2015, for the sale, transfer, or merger in Coryell County pursuant to the Texas Water Code.

Docket Style and Number: Application of Kempner Water Supply Corporation and the City of Copperas Cove for Sale, Transfer, or Merger of Facilities and Certificate Rights in Coryell County (Bradford Oaks Ranch Subdivision), Docket Number 45212.

The Application: Kempner Water Supply Corporation (Kempner) and the City of Copperas Cove (the City) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Coryell County. Specifically, Applicants seek approval to transfer portions of Kempner's water certificate of convenience and necessity (CCN) No. 10456 and associated facilities to the City and to amend the City's CCN No. 10449 accordingly. This application affects approximately 112.69 acres and 27 current customers in the Bradford Oaks Ranch Subdivision.

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 45212.

TRD-201504148  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 6, 2015



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 29, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Zapata County Waterworks and Ramireno Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Zapata County, Docket Number 45205.

The Application: Zapata County Waterworks (Zapata) and Ramireno Water Supply Corporation (Ramireno WSC) (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Zapata County. Specifically, Zapata seeks approval to acquire the real estate, business property, and infrastructure (including water meters, water lines, and other facilities) of Ramireno WSC, held under water Certificate of Convenience and Necessity (CCN) No. 12378.

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 45205.

TRD-201504150  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 6, 2015



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 30, 2015, for a sale, transfer or merger in Coryell County pursuant to the Texas Water Code.

Docket Style and Number: Application of Kempner Water Supply Corporation and the City of Copperas Cove for Sale, Transfer, or Merger of Facilities and Certificate Rights in Coryell County (Skyline Flats), Docket Number 45211.

The Application: Kempner Water Supply Corporation (Kempner) and the City of Copperas Cove (City) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Coryell County. Specifically, Applicants seek approval to transfer portions of Kempner's water certificate of convenience and necessity (CCN) No. 10456 and associated facilities to the City and to amend the City's CCN No. 10449 accordingly. This application affects approximately 15.238 acres and 47 current customers in Skyline Flats Phase 2, Section 2.

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 45211.

TRD-201504153  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 6, 2015



### Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint application to amend a water certificate of convenience and necessity in Hidalgo County.

Docket Style and Number: Joint Application to Amend City of Edinburg's Water Certificate of Convenience and Necessity and to Decertify a Portion of North Alamo Water Supply Corporation's Certificate in Hidalgo County, Docket Number 45208.

The Application: The City of Edinburg (Edinburg) and North Alamo Water Supply Corporation (North Alamo WSC) (collectively, Applicants) filed with the Public Utility Commission of Texas a joint application to amend Edinburg's water certificate of convenience (CCN) No. 12106 and to decertify a portion of North Alamo WSC's water CCN No. 10553 in Hidalgo County. The amendment will enable Edinburg to include approximately 40 acres of land and zero current customers.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45208.

TRD-201504151  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 6, 2015



### Notice of Petition for Amendment to Sewer Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on September 28, 2015, of a petition to amend a certificate of convenience and necessity in Denton, County by expedited release.

Docket Style and Number: Petition of Continental U.S. Management Corporation to Amend the Town of North Lake's Sewer Certificate of Convenience and Necessity in Denton County by Expedited Release, Docket Number 45200.

The Application: Continental U.S. Management Corporation (Continental) states that it owns 138.907 contiguous acres that is not receiving sewer service and request s decertification of this property from the Town of North Lake's sewer Certificate of Convenience and Necessity No. 20866.

Persons wishing to intervene or comment on the action sought should contact the commission no later than October 23, 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 October 23, 2015. Hearing

and speech impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45200.

TRD-201504152  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 6, 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 September 28, 2015, of a petition to amend a certificate of convenience and necessity in Denton, County by expedited release.

Docket Style and Number: Petition of Continental U.S. Management Corporation to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release, Docket Number 45199.

The Application: Continental U.S. Management Corporation states that it owns 138.907 contiguous acres that is not receiving water service and requests decertification of this property from Aqua Texas, Inc.'s water Certificate of Convenience and Necessity No. 13201.

Persons wishing to intervene or comment on the action sought should contact the commission no later than October 23, 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 October 23, 2015. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45199.

TRD-201504162  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: October 6, 2015



## Texas Department of Transportation

### Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, November 5, 2015, at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas to receive public comments on the proposed updates to the 2016 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2016 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in

Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at:

[http://www.txdot.gov/public\\_involvement/utp.htm](http://www.txdot.gov/public_involvement/utp.htm).

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division at (512) 486-5038 not later than Wednesday, November 4, 2015, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2016 UTP to James W. Koch, Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2016 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on November 16, 2015.

TRD-201504147

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: October 6, 2015

## University of Houston System

### Request for Proposals

The University of Houston - Victoria announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP 765-16-0001, An Outside Consultant to Provide Guidance and Suggestions in Marketing, Recruitment and Retention, Strategic Planning, and Data Management.

#### Purpose:

The University invites you to submit a proposal for consultant services to include guidance and suggestions in the following areas: marketing, student recruitment, student retention, strategic planning, and data management. The University of Houston - Victoria (UHV) began as an off-campus center of the University of Houston in 1973. In 1983, the Texas Legislature granted the institution permanent degree-granting status at the upper division (juniors and seniors) and graduate levels. UHV gained approval to admit underclassmen and offer lower-division courses in 2009 and enrolled its first freshmen and sophomores in fall 2010. UHV shares a campus with Victoria College (VC), a public community college. UHV purchased 19 of VC's 80 acres for its aca-

demically buildings. Since 2009 UHV has also created a 19-acre residence hall area that is a 10-minute walk from the two main UHV buildings.

#### Eligible Applicants:

Consulting firms with related knowledge and experience in:

- Evaluation techniques for marketing activities as well as suggestions related to the overall scope, structure, purpose and work of our marketing area
- University recruitment - undergraduate, graduate, domestic and international - for an institute of higher education similar in size to the University of Houston - Victoria
- Student retention efforts
- Strategic planning, including organization structure
- Data Management - Identify sources for assistance with the creation and modification of data bases to facilitate data-driven decisions related to all aspects of enrollment management

#### Services to be performed:

Narrative, verbal and presentational guidance and recommendations to evaluate and improve the marketing techniques for our marketing area and for strategies the University can implement to improve undergraduate and graduate recruitment, both internationally and domestically, and to increase retention of current students. Also, the University is requesting guidance in strategic planning efforts, including suggestions for improved organizational structure. Finally, the University is seeking help in identifying sources to assist in the creation and modification of databases to facilitate data-driven decisions related to all aspects of enrollment management.

Finding by Chief Executive Officer, Interim President Raymond Victor Morgan Jr.:

As provided by Texas Government Code, §2254.028, the President of the University of Houston - Victoria (UHV) has concluded that consulting services are necessary for the reasons that follow. First, the Chancellor of the University of Houston System has given UHV the goal of becoming a destination university with 6,000 students in Victoria by the year 2025. Second, marketing, recruitment and retention are key components of achieving that goal. Third, UHV lacks sufficient expertise in-house to develop the most effective plans for marketing, recruitment and retention. Fourth, additional efforts in enrollment management will be critical in achieving our goal. Therefore, securing the services of a knowledgeable outside consultant to UHV in these areas and related enrollment management issues will hasten our movement toward the goals of a destination university serving the Coastal Bend Region of Texas.

#### Review and Award Criteria:

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

1. Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.
2. Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in Section 3 of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by Purchasing.
3. Purchasing will combine the committee's scores to determine which proposal received the highest combined score.
4. Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: UHV must receive proposals according to instructions in the RFP package on or before November 9, 2015, at 2:00 p.m. (CST).

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/>.

The sole point of contact for inquiries concerning RFP is:

Shawn Clark

UHV Purchasing

3007 N. Ben Wilson

Victoria, Texas 77901

Phone: (361) 570-4821

Email: [clarksr@uhv.edu](mailto:clarksr@uhv.edu)

TRD-201504149

Dr. Raymond Victor Morgan Jr.

Interim President

University of Houston System

Filed: October 6, 2015



## **Workforce Solutions Borderplex**

Request for Proposals

**PY15-RFP-300-100A**

Workforce Solutions Borderplex is soliciting proposals from qualified vendor(s) for janitorial and light maintenance services for three (3) Workforce Board Career Centers: North Loop Center, Northeast Center, and Fabens Center.

The Request for Proposal (RFP) # PY15-RFP-300-100A may be requested in writing or picked up in person on or after 9:00 a.m. MST, Monday, October 5, 2015, at the WSB's offices located at 300 E. Main, Suite 800, El Paso, Texas 79901. The RFP will also be available online at [www.borderplexjobs.com](http://www.borderplexjobs.com) on and after the above date.

Proposals to this RFP must be physically received by the Purchasing Department no later than 5:00 p.m. MST, October 26, 2015.

Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711 (Voice/Voz) or 1-800-735-2989 (TTY) Igualdad de oportunidades de Empleo/Programas. Equipo auxiliar y servicios de apoyo están disponibles para personas con discapacidad al ser requeridos. Relay Texas: 711.

TRD-201504092

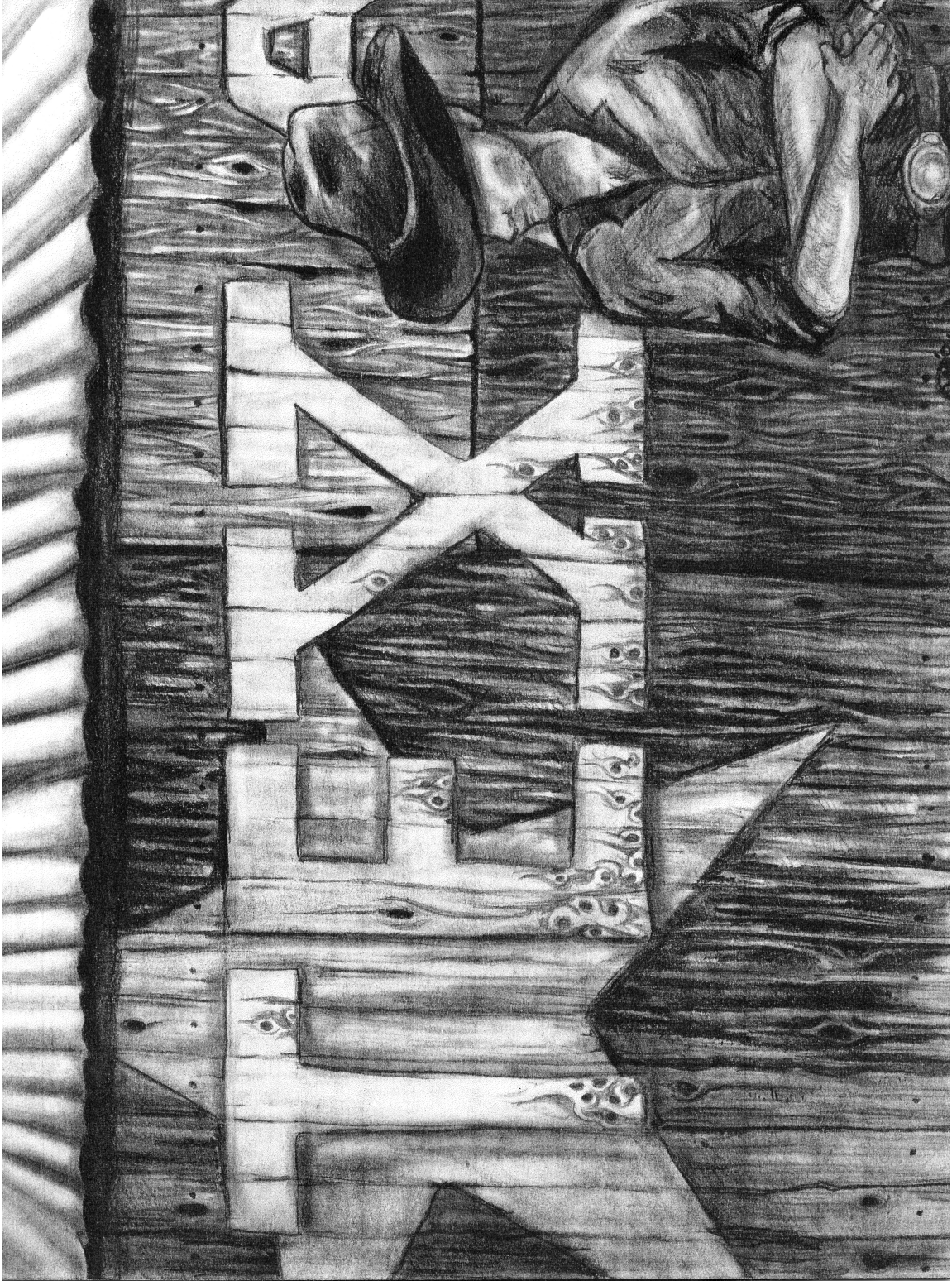
Alondra McDuffie

Purchasing Assistant

Workforce Solutions Borderplex

Filed: September 30, 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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